

**OVERSIGHT OF THE  
DEPARTMENT OF HOMELAND SECURITY**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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JUNE 11, 2014

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**Serial No. J-113-65**

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Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PUBLISHING OFFICE

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## **OVERSIGHT OF THE DEPARTMENT OF HOMELAND SECURITY**

**WEDNESDAY, JUNE 11, 2014**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:22 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Hatch, Sessions, Cornyn, Lee, Cruz, and Flake.

### **OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. I welcome Jeh Johnson today to the Judiciary Committee for his first oversight hearing as the Secretary of the Department of Homeland Security.

I would note for the record we are starting late because we had a roll call vote on the floor, and both Senator Grassley and I wanted to accommodate Members to be able to vote and then come here.

For the past 7 months, Secretary Johnson has led an agency that plays a vital role in protecting our national security, providing disaster relief, and ensuring cybersecurity. The Department of Homeland Security also has primary responsibility for implementing and enforcing our Nation's immigration laws—something that the Secretary has acknowledged is broken.

Now, one year ago, this Committee came together after weeks of exhaustive deliberations. We met all day, way into the evening, day after day, and we passed bipartisan legislation to fix the broken immigration system. We then had major debate on it on the floor of the Senate, and we passed it in the Senate with a bipartisan majority. It would unite families, certainly spur the economy—as everybody from Grover Norquist on said, it would give a huge boost to our economy—and it would help protect our borders. We knew last year that the cost of inaction was too great, and Members of this Committee and the full Senate passed historic legislation that would create a system worthy of American values.

Unfortunately, the House leadership refused to act. Last year, Senators reached across the aisle, and we worked together on meaningful and comprehensive legislation, but all we have seen from the House Republican leadership so far are shifting principles and repeated postponements. And I think that is a mistake. Republicans and Democrats came together here in the Senate. They

ought to be able to do the same thing in the House. I do not think it has helped the Republican Party, but it also has not helped the country. And that should be more important than any party. Every day the House fails to act is another day that families are torn apart and our economy lags. Every day the House fails to act, we realize the human cost of doing nothing to fix our broken immigration system.

We see the human cost in the gripping photographs of young children, seeking a better life, housed in facilities at the border. Even this morning's news showed pictures of that. The pictures are shocking. So are the numbers. In 2011, 6,560 unaccompanied children crossed the border, some younger than even my youngest grandchildren. And those numbers have now skyrocketed. Just in the last 7 months, nearly 50,000 children have already been apprehended, and that number will likely double before the end of 2014. That is more children than all the people in the largest city in my State of Vermont.

President Obama has called this an "urgent humanitarian situation," and I agree. And I commend Secretary Johnson for coordinating with relevant agencies to address this dire situation. But reports indicate that the flow is overwhelming the agencies responsible for these children. The Senate-passed immigration bill would help address this issue. If people want to address it, the House should take that bill up immediately.

And I am deeply concerned with the conditions and treatment of other immigrant detainees, especially those who are sexually assaulted while in custody. When Congress passed the Leahy-Crapo Violence Against Women Reauthorization Act last year, it included a provision designed to prevent sexual violence in DHS facilities. I thank the Department for recently issuing compliance regulations, and I look forward to hearing about the changes underway to stop the abuse.

I am troubled by reports of Border Patrol agents resorting to the use of deadly force. Since 2010, agents who were assaulted with rocks have responded with deadly force 43 times, resulting in 10 deaths. One who received, in effect, this death sentence was Jose Rodriguez, a 16-year-old boy who was shot multiple times, including in the back of his head. He should not have thrown a rock, but he should not have been shot. And 20 months later, the investigation into this boy's death is still without resolution. The Border Patrol's recent release of its use-of-force policy handbook and directive on how personnel should respond to threats is a positive step, but we need more transparency, we need more timely resolution so that the families involved can have closure and agents can have better training.

In addition to this human cost of our broken immigration system, there is a powerful economic cost. I have long championed the EB-5 Regional Center Program because of its job creation potential in Vermont and in other States. Senator Sessions has joined me on that. And it is done with no cost to American taxpayers. But absent congressional action to make this jobs program permanent, the program's potential is limited. I am concerned that visa processing delays are threatening to undermine economic development where it is needed most. This uncertainty could slow down the program's

growth and deter investors, so I urge the Department to focus on timely consideration of EB-5 applications.

You know, the status quo is not an option. It is not sustainable for our families, for our economy, or for our national security. The humanitarian crisis we now face is just the latest reminder of why House Republicans must act, as we did in the Senate a year ago. Republicans and Democrats came together to fix our broken immigration system. We have waited too long, but there is still a window of time for the Republican leadership in the House to join us in this important effort.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

I look forward to discussing these issues with Secretary Johnson. I will yield first to Senator Grassley, and then we will hear from the Secretary.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,  
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Secretary Johnson, I appreciate your being here. Hearings like this are very essential to Congress' oversight of the executive branch. You have committed, Secretary Johnson, to cooperating with Congress. I appreciate that. I know that you have instructed your staff to respond to every letter in a timely manner. There are some letters that are older than before you became Secretary that the Department still has not responded to. Of course, the fact that those were not responded to is not your fault, but maybe you can do what you can to speed up what Secretary Napolitano did not do. So many times answers are not responsive, so it is especially nice to have you here today to provide answers on issues that we all care about.

Two weeks ago, the House Judiciary Committee asked you, Mr. Secretary, to explain why the Department released more than 36,000 convicted criminal aliens from custody in the year 2013. At that time you did not have an answer, saying that you wanted "a deeper understanding" of this issue. So I look forward to hearing today what you have learned on those issues in the last 2 weeks, because releasing 36,000 people with criminal convictions is no small matter. These individuals have been convicted of homicide, sexual assault, and kidnapping. They are also, many of them, drunk drivers and drug offenders. And, of course, now they are free roaming our streets.

The administration cannot hide behind the excuse that it released these individuals due to a court order, although that might be true in some cases, but in many cases, the decision to release was entirely voluntary. The Department needs to explain those decisions in specific cases and in detail.

I am also concerned that the President believes that he can and should act on his own when he does not get his way with Congress. He said, and you have heard this quote: "I have got a pen and I have got a phone."

For example, in 2012, Congress was not consulted about deferring enforcement action on individuals in the country illegally. The Department made its own rules, and the program has proven to be a haven for loopholes and mischief.

The Secretary just announced a renewal of the program, and weakened it. For example, the administration gutted the requirement and made the process easier to reapply by eliminating any need to provide evidence. What is alarming is that the Department confirmed that it does not routinely check the validity of documents that are presented by applicants.

When applications seem to be rubber-stamped and lawful status is so easily obtained, it is no wonder there has been a surge of unaccompanied alien minors at our southern border. The number of minors coming to our country has climbed from 6,000 in 2011 to an expected 145,000 next year.

Some are calling it a humanitarian crisis. And, quite frankly, it is. These, of course, are vulnerable children. They are being guided through deserted areas of adjoining countries with their lives on the line. They are escorted with strangers, away from family in some cases, not knowing what lies ahead. There is a massive potential for these children to be abused.

If the administration does not do its due diligence to verify the relative or parental relationship when it releases these children, then, of course, those same children could be put in the hands of pimps or traffickers.

Children are being lured into these dire circumstances quite frankly by false promises. The administration has refused to be serious about immigration reform. It has a policy of "just get to the answer yes," and that is a philosophy that has sent a signal that everyone has a chance of getting immigration benefits, even if you have to break the law to get them. The administration is finding ways to get around the rules, implementing many of the recommendations in the internal 2010 amnesty memo that was leaked.

This is a disaster made by the administration, and only the President can correct it by sending the signals that these people should not be brought here and that the law is going to be enforced. In other words, the President must take responsibility.

Unfortunately, the administration does not seem to be prepared. It has failed to propose any solutions that will prevent children from being put in this situation in the future.

Let me suggest for starters that the President needs to send a signal that the law will be enforced and that people with unlawful status will be returned to their home country. Instead of reviewing deportation policies and suggesting ways to remove fewer people, I would suggest that the President task you, Secretary Johnson, with finding ways to actually enforce the laws that we have on the books.

What is ironic is that the executive branch has taken action on so many controversial matters but refuses to do more to close loopholes and improve national security in several programs.

Let me give you an example. In January, the Fourth Circuit's decision in *Holder v. Martinez* paved the way for former gang members here illegally to argue that their status as a former gang member entitles them to remain in the United States. This would open the door to violent gang members renouncing their membership as a ruse in order to just stay here. But the Department of Justice did not appeal the ruling. And I would hope that you, Sec-

retary Johnson, would give us your opinion on it and maybe even suggest that it be appealed.

The new exemptions to the immigration laws that were announced by the Secretary in January are also very concerning. These exceptions would allow foreign nationals who have provided “limited” material support to terrorists and terrorist organizations, that these people could, in fact, find asylum in the United States. We should not be relaxing our laws to permit anyone with a connection to terrorism to live here. And especially when it is reported that up to 70 percent of the asylees show signs of fraud, I do not have confidence in our Government’s ability to effectively carry this out.

In addition, the Department’s management failures in administering the Chemical Facilities Anti-Terrorist Standards program, intended to regulate chemical facilities for national security purposes, are very well documented. I have stated that in previous hearings. Although some welcome progress has been made recently, I continue to be concerned that the program is not functioning effectively. The Department is far behind in meeting its deadlines.

Optional Practical Training, created by executive branch regulation, provides foreign students the opportunity to obtain work in their major areas of study during and after completing an academic program here. In 2014, the Government Accountability Office report found extensive and alarming mismanagement of the program. The Department does not know where thousands of these individuals are working or whether they are working at all. Given the risk that foreign students have posed to our homeland, I consider this a serious matter. So I asked Secretary Johnson to place a moratorium on the program until he can certify that all participants have been located.

Two other issues shortly. One is the EB-5 Regional Investment Program. That, as you know, is an employment-based immigration program designed to stimulate job creation through foreign capital investments. Yet we have been told that this program is being used to facilitate terrorist travel, economic espionage, money laundering, and investment fraud. The Inspector General said the agency cannot manage the EB-5 program effectively. The program needs a complete overhaul and some real attention from the administration before the vulnerabilities have a devastating effect on the homeland.

Finally, I want to comment on the use of drones. The use of drone technology holds great promise for the securing of our borders. The Department of Homeland Security should be as transparent as possible about how it intends to use drones. In July 2013, it was reported that a Customs and Border Protection document connected to its drone program, apparently made public through a FOIA request, suggested that Customs and Border Protection might arm its drones with non-lethal weapons. That agency reportedly issued a statement shortly thereafter disclaiming such an interest. But if that was the case, why would the document say that?

I yield the floor.

Chairman LEAHY. Mr. Secretary, your full statement will be placed in the record as though read. Before we came in here, though, you mentioned to me—and I think this is a good idea—that

you wanted to talk about what is happening on the border, so consider your full statement part of the record, and please, the floor is yours.

**STATEMENT OF HON. JEH JOHNSON, SECRETARY, U.S.  
DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Secretary JOHNSON. Thank you, Senator, Senator Grassley, Members of this Committee. You have my prepared statement. In it I refer to the various missions of DHS, including the counterterrorism mission, border security, aviation security, cybersecurity, maritime security, response to natural disasters, protection of our national leadership, among other things. In the 5 minutes I have, I would like to focus on the problem of children crossing our southwest border, in particular into South Texas and the Rio Grande Valley Sector.

Chairman, as you noted, the numbers are rising. From 2011, there were approximately 6,000 that year. This year, there will be multiples of that. This correlates with an overall rise in illegal migration into the Rio Grande Valley Sector principally from what we refer to as "third country nationals," those from Guatemala, El Salvador, and Honduras, who are approximately three-quarters of that population.

To meet this surge, we have had to surge resources that are normally dedicated to things such as border security. I saw this situation vividly myself on May 11th when I visited McAllen Station processing center. It happened to be Sunday, Mother's Day. I approached a 10-year-old girl and asked her, "Where is your mother?" And she told me, "I do not have a mother. I am looking for my father in the United States."

I returned to Washington the next day determined to do something about the situation. Undeniably, there is a problem of humanitarian proportions in the Rio Grande Valley Sector that we must deal with, so here is what we are doing about it.

Number one, on Monday, May 12, I declared a Level 4 condition of readiness within the Department of Homeland Security, which is essentially a determination that the capacity of CBP and ICE to deal with the situation is full and we need other resources of DHS. I appointed the Deputy Chief of the Border Patrol to be the DHS coordinator of that effort for a DHS-wide response to this situation.

On June 1st, pursuant to the Homeland Security Act, directed me to establish a unified coordination group to bring to bear the assets of the entire Federal Government. This includes DHS and all of its components, Health and Human Services, the Department of Defense, DOJ, GSA, and the State Department. I have in turn appointed the FEMA Administrator, Craig Fugate, to serve as the Federal coordinating official for this U.S. Government-wide effort. Our goal is to quickly and safely transport the unaccompanied children out of CBP custody into the hands of HHS, supplementing this process all along the way in a safe and humane manner, into ultimately a safe and secure environment that is in the best interest of the child, pursuant to the requirements of the law. FEMA has dedicated 70 people full-time to coordinating this effort.

We are looking for more space for processing and for detention. The Department of Defense has loaned us Lackland Air Base in

Texas for HHS to process the kids. We are leasing Fort Sill in Oklahoma for the same purpose. We have gone to a DOD facility in Ventura, California, to deal with the processing of the influx of people into South Texas. We have had to go beyond McAllen Station. We have had to go to Nogales, Arizona, as Senator Flake knows. Initially, we were sending family units to Nogales for processing there, and then on into the interior if they are released. We are now sending children, UACs, to Arizona. As I explained to Governor Brewer on Saturday night, I pledge to deal with this situation as best I can and to manage the situation as best I can. As of now, we are sending UACs, the unaccompanied children, to Arizona for processing and then on to HHS. They are not being released into Arizona.

GSA is looking for other space to lease to deal with family units, to deal with the children, to deal with the processing of these kids. We brought on more transportation assets. The Coast Guard at my direction is loaning air assets to transporting children from DHS to HHS custody and from one HHS facility to another to deal with this situation. ICE is leasing more aircraft.

Five, we are doing a preliminary screening for health reasons of all those who come into our facilities in South Texas. The Office of Health Affairs and the Coast Guard is lending in that effort. And we called upon NGO's, volunteer organizations, charity organizations to assist in this effort. The American Red Cross I have had conversations with directly. At our request they are providing humanitarian needs for the situation—blankets, hygiene kits.

I would like to give a shout-out to the Texas Baptist men who have provided shower trailers in South Texas. The Department of Justice is loaning resources, immigration judges for faster removal proceedings.

In addition to all this, we know we must do something to stem this tide, so we have been in contact—I have done this personally—with Ambassadors and other officials of all four countries—Guatemala, El Salvador, Honduras, Mexico—to talk about our shared border security interest and faster repatriation. I plan to go to Guatemala myself in July to deal with this situation.

We have reinitiated our public affairs campaign in Spanish and in English, radio, print, and TV, to talk about the dangers of sending your kids over the border and the dangers of putting your kids into the hands of criminal smuggling organizations.

We have surged criminal investigator resources in HSI and CBP for the prosecution of smugglers, those who smuggle the kids. In May 2014, there were 163 arrests of smugglers along the southwest border. I have directed a 90-day surge of HSI personnel, 60 personnel to offices in San Antonio and Houston, to work with DOJ to ramp up our prosecutions of the smuggling organizations.

In May, I directed a unified campaign plan to deal with the southwest border, calling upon all assets of the Department of Homeland Security in a coordinated way to address our border security in the southwest border and to fill the gaps, if necessary to call upon departments of our Government to assist.

I have asked that we consider all lawful options to deal with this situation. If there are options, I want to hear about them.

Finally, Members of this Committee and the Senate, we need your help. We have asked through OMB for an additional \$166 million in Fiscal Year 2015 to deal with this situation. I know HHS has also asked for additional funding. I am providing daily reports to my interagency partners. I am receiving daily reports on this situation. Yesterday we began briefing Members of Congress and their staffs in conference calls three times a week. I am told yesterday in our call we had 300 call-ins from up here on the Hill to keep you informed. We are, we can and must address this situation.

Thank you.

[The prepared statement of Secretary Johnson appears as a submission for the record.]

Chairman LEAHY. Thank you very much, and I appreciate that because, as you know, this is an area we are greatly concerned about.

Incidentally, I would like to take a moment to recognize we have some special guests with us here today. Normally we do not do this, but I want the record to show we have in the audience families who have been personally impacted by deportations and some directly impacted by CBP use of force, and I appreciate those. Please feel free to stand and just the record would note that you are here. Thank you very much.

Mr. Secretary, it has been a year since the Senate passed the comprehensive immigration bill. I mentioned in my opening statement about the work we went through. We were here some nights until 9, 10 o'clock at night. I remember the excitement when we finally passed it out of here.

I was out on the west coast, in Oregon, in a farm community, and I went to a church. They had hundreds and hundreds of Spanish-speaking people who said they had watched every bit of this hearing. They had seen, because we streamed it and C-SPAN carried it, and they would watch it at night on a big screen in the church auditorium. And one of the hundreds of people in this church said to me, "Do you remember when the gavel came down on the final vote, a number of people in the back of the room stood up and shouted, 'Viva, Leahy'?" And I said, "Well, yes, and that meant a great deal to me." He said, "Well," and then the whole congregation stood up and repeated that.

It was personally gratifying, but it would be a lot more gratifying if we actually get the bill through. Republicans and Democrats worked together to get it through the Senate, and we passed it. We passed it in the Senate.

But now we need to have real pressure from the administration on the other body. I am discouraged when I hear the press say, "Well, immigration is dead." Well, that is easy to say if you are in a job where you are paid every week, whether it is in the media or anything else. But if you are a family looking for immigration reform, it is not easy to hear.

So can you tell us why it is do imperative that the House of Representatives takes up the bipartisan Senate bill and start voting on it?

Secretary JOHNSON. Senator, as you noted, it is my belief that our current system is broken and totally unsatisfactory for reasons that I think almost every in this room can agree. As I look further

and further into the system, I find more and more problems. And we have 11.5 million undocumented in this country who are not going away. They are not going to self-deport. In many States now, they can have driver's licenses. In the State of California, the Supreme Court says that an undocumented immigrant can practice law. So I do not think they are going away, and I do not think they are going to self-deport, and I do not think we have the resources to deport 11.5 million undocumented. In fact, I know we do not.

And the bill passed by the Senate last year by a vote of 68–32 I think addresses the problems we have in a number of respects: border security, added border security, added personnel, added resources, which is something I believe we need very much, particularly on the southwest border; mandatory E-Verify; and an earned path to citizenship for the 11.5 million who are here.

Some people would brand that “amnesty.” I do not. It requires an extensive vetting. It requires accountability. It requires paying penalties and taxes. And it requires a 13-year wait to get on line behind those who are already on line.

So I believe that it is an excellent piece of legislation. It is obviously the product of a lot of compromises and very hard work, but I believe that the bill that was passed by the Senate last year will go a very long way to adding to our border security and fixing our system. And I am continuing to urge the House of Representatives to pass comprehensive reform, whether in one bill or a series of bills, but we really need to act on this. And I remain optimistic that we will.

Chairman LEAHY. This country, to its credit, has responded to humanitarian crises around the world, whether it is tsunamis in the Pacific, earthquakes in Haiti, and so on. But we have got a humanitarian crisis right here in the United States. I mentioned seeing children at the age of our grandchildren when they go to grade school, and they have a adult walking them to school and living in a nice, secure home and all. And yet we see these children holding each other's hands, coming by themselves, whether from El Salvador or wherever else, to cross the border. They are risking everything on this journey. Some do not make it alive.

Now, some have suggested the administration's DACA policy or the proposed DREAM Act is driving the crisis. I do not agree. I think it is the fact that we in the Congress have not fixed a broken immigration system. I feel very strongly about this. I live in a border State, and I realize it is entirely different, the northern border. I am an American first and foremost, and I think this is the America that brought my grandparents here from Italy. I wonder what we are doing.

What do you believe is driving this huge rise in these children crossing the border?

Secretary JOHNSON. Senator, I believe that the situation is motivated primarily by the conditions in the countries that they are leaving—El Salvador, Honduras, and Guatemala. Violence, poverty—I believe that is principally what is motivating the situation.

I suspect also that the parents are aware that under our current law, once they are in the hands of CBP, they are—we are required to give them to HHS, and HHS is required to do what is in the

best interest of the child. But I believe that what is motivating this principally are the situations in the countries that they are leaving.

Chairman LEAHY. Doing what is best for the children, but the facilities that they are being detained in, outside observers have not been able to look at those facilities, as I understand it. NGO's have not and others have not. I would urge you to allow others to go in and look at these facilities or, frankly, some of us will come down and look at them. I think it should be done.

Secretary JOHNSON. I have been to McAllen once. I am going back again next week. I am going to a detention facility outside Chicago the day after tomorrow.

Chairman LEAHY. I appreciate that.

Secretary JOHNSON. This is something I care about.

Chairman LEAHY. I know you do, but let us make them more open about what is going on. And are you taking steps, my last question—I referred to what I think is the excessive use of force, somebody shot several times, a teenager shot several times because he threw a rock. Nobody justifies the throwing of the rock, but nobody justifies a death sentence for throwing a rock. Are you taking steps to ensure that there is proper training and proper action when excessive force is used?

Secretary JOHNSON. Senator, I know from my days as the senior lawyer for the Department of Defense that, whether it is a law enforcement entity or a military force, if excessive use of force occurs, it threatens to undermine the entire mission and the credibility of the entire mission. So I have encouraged CBP to be more transparent when it comes to its use-of-force policies, and they have. And I have encouraged CBP to more explicitly deal in the use-of-force policies with rock throwing and situations where the officer is threatened by a vehicle and they have rewritten those policies. I applaud the Commissioner's efforts at more greater transparency and the personnel changes he is making in internal affairs in CBP.

Chairman LEAHY. And we can discuss this further. I do not want to take up further time. Senator Grassley?

Senator GRASSLEY. Mr. Secretary, I am going to start with documents from your Department that reveal that ICE released about 36,000 convicted criminals awaiting deportation; 116 of those individuals were convicted of homicide, with a total of 193 homicide convictions among that 116 people. One conviction even included willfully killing a public official with a gun.

ICE claims that the court decisions required the release of criminals who were convicted of 72 percent of the homicides. I have asked for evidence to prove that. But that means that by its own admission the Department voluntarily set free an untold number of murderers. I would like to know how that happened, and have you made any effort to relocate them?

Secretary JOHNSON. Senator, first of all, I received a letter from you on Monday on this topic, which I intend to respond to promptly. I have received a number of letters from Members of Congress on this, and we have responded.

You are correct that a number of these are the result of orders from immigration judges. I believe you noted that in your opening remarks. It is also the case that a large number of these releases are after final orders of deportation and we have gone beyond 6

months of detention. And Supreme Court precedent requires, with exceptional circumstances, that we release an individual if after 6 months it does not appear we can repatriate the individual pursuant to a case called *Zadvydas v. Davis* in 2001. And you were also correct that a number of releases are at the discretion of ICE officers pursuant to conditions of release that are intended to secure their return.

Now, I have asked for greater clarity on the numbers, particularly the 116 in Fiscal Year 2013 who appear to have been released after a homicide conviction. I would like to understand the circumstances under which that occurs, particularly the case you referred to of the killing of a public official with a gun. I am waiting for an answer on that.

I have asked our people to do two things, Senator:

One, I want to be sure that we are construing the Supreme Court precedent properly. There is an exception in the rule for extraordinary circumstances of national security, public safety. I want to be sure we are not construing that too narrowly.

And in the case of a convicted felon convicted of a homicide, I want to understand why that does not fit within the exception. So I have asked our lawyers to take a close look to see whether we are reading the case properly. I also want to have greater clarity with regard to the approval process and the review process for releasing these individuals and possibly elevate the approval level for releasing a convicted felon pursuant to conditions.

So it is something, Senator, that I am very focused on. I agree with your concerns, and I will be responding to your letter with greater detail, sir.

Senator GRASSLEY. Okay. Then I will go into more specifics in this area. With regard to the 36,000 criminal aliens released, the administration uses the excuse that many individuals were released according to court order. I would like to have you provide me with data on the recalcitrant countries by the end of the week, if you would, on why they will not take them. And when you testified on the House side, you said you were not aware of how many times your Department has asked the Department of State to use its visa denial authority. So I would like to have you tell me, if you can right now, if you have any plans to recommend that Senator Kerry deny visas to countries that refuse to cooperate. And the reason that I ask that question is it seemed like in the case of Guyana, when we use that tool, that they accepted 115 out of 116 people that we wanted them to take back. So it would seem to me to be quite a tool.

Secretary JOHNSON. I am aware of the case of Guyana from 2001. I agree it was effective in that instance, and I have asked our staff to take a look at whether we should do more of this.

Senator GRASSLEY. Well, when you reach a decision with your staff on that point, would you tell us by writing, please?

Secretary JOHNSON. Yes, sir.

Senator GRASSLEY. And I hope you will make a quick decision, because I think this is something that we need to work on to get these countries to take these people back.

Then also you brought up the *Zadvydas* case, and I would only suggest to you that it probably needs a legislative fix. I do not have

a legislative fix to present, but would you see that as something that you could look at as a way of narrowing the impact of that case? Because I think you are reviewing it, and I am glad to hear that you are reviewing it, and there may be wider use than is appropriate. So I think a legislative fix is necessary.

Secretary JOHNSON. Senator, it is my understanding that the case concerns a construction of the Constitution, so I do not know whether a legislative fix is appropriate. But I think looking at legislation is worthwhile. When I read the case, I was struck by the fact that there might be room for greater space in the exception for detaining people who are true threats to public safety. So I am interested in having our lawyers be sure we are interpreting it properly, and I would be willing to think about legislation, sir.

Senator GRASSLEY. This will have to be my last question because I will go over the equal time that I have with the Chairman. The crisis along the border—this is in regard to unaccompanied children. The crisis along the border involving these minors I think—and you probably would disagree with this, but it can be attributed to the President’s policies. You recently said, “We have to avoid practices and policies that operate as magnets for further illegal migration.”

I understand that there are a variety of reasons that people come to this country: family, finding work, obviously wanting a better life. But it is clear to me and to agents interviewing these children that this surge is partly due to the promises of immigration reform and administrative amnesty. So while I applaud the administration’s efforts working together to find shelter, food, and clothing for these children, no one has presented a long-term solution. I take into consideration the contacts you have said you have made or are going to make. But if you are releasing tens of thousands of individuals each year, how will anybody in a foreign country think that we are serious about enforcing the laws?

And, by the way, I will not go into detail because I do not have time, but we have a summary of some questionnaires and interviews that were made with about 230 people, and you quickly draw the conclusion from this memorandum from your Department that does not have an official seal that people are coming here because they think we have passed a new law and they want to take advantage of it.

Secretary JOHNSON. Well, first of all, those apprehended at the border are priorities for removal. If you are apprehended at the border, if you are a recent arrival, you are a priority for removal. That is one. The legislation that is being contemplated provides for an earned path to citizenship only for those who arrived in this country before the end of 2011. So it would not provide for an earned path to citizenship for somebody who came here yesterday.

Senator GRASSLEY. That is the propaganda that is going out, that there is a new law.

Secretary JOHNSON. Well, that does not square with the reality of the legislation.

Senator GRASSLEY. I am sorry.

Chairman LEAHY. That is okay. Well, what we could do, if we wanted to solve the problem, is have the House pass the legislation

that we passed, and that would settle it, and people would know where we are.

I am going to turn the gavel over to Senator Feinstein, but I am going to leave you in writing two questions, one about the staffing on the northern border, especially as it is impacting the State of Vermont where it is slowing commerce—where the lack of staffing is really slowing commerce and hurting us, and also a question on EB-5. I would appreciate it if you or your office could give me a response on that this week.

Secretary JOHNSON. We will do so, yes.

Chairman LEAHY. Thank you.

[The questions of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. Senator Feinstein.

Senator FEINSTEIN [presiding]. Well, thank you very much, Mr. Chairman.

Let me begin by saying congratulations on taking forceful action. I am really impressed with your initiative. I support everything you have done. I became involved in this issue in 2008 when on television I saw a young Chinese girl—I think she was 14—chained before a judge, tears rolling down her face. She was a survivor of one of the container episodes where people came across the Pacific in a container. And she could not speak the language. She had no resources. Her parents were dead. And I got involved in the issue and authored the Unaccompanied Alien Child Act, which President Bush signed. It became the law. And then there were some changes made which moved the children into HHS and the Office of Refugee Resettlement. But I have never seen anything like this.

I was just looking at the statistics, and here is the problem—and it is Honduras, it is Guatemala, and it is El Salvador. And Honduras from 2009 to 2014, the increase is 1,272 percent; Guatemala, same time, the increase is 930 percent; and El Salvador, it is 707 percent. Unaccompanied aliens under the age of 17 from Mexico have actually dropped 28 percent. So this appears to me to be very much a Central American problem.

If you look at where they are coming across, that changes it, and, of course, the biggest change is in the Rio Grande, Senator Flake's area, where we have 33,470 minors coming into this country that way. But, I mean, this is a real heartbreak. And if I were the President of El Salvador or Guatemala or Honduras, I would not stand by and see this happen.

You mentioned that you met with their Ambassadors. Is there not something that those countries are willing to do, A, to provide some protective ability to the very poor families, some food, because as I understand this, these are parents that cannot provide for their children; and, C, their children's best opportunity to live and remain unmolested is taking what must be a horrendous journey, probably for the most part handled by coyotes?

So the question I have of you, Mr. Secretary: What was the response of the Ambassadors with whom you spoke?

Secretary JOHNSON. Well, the response is all the right things, but the follow-up is going to be key. And that is why I think sustained engagement with the senior-most levels of their governments is key. I called all four Ambassadors Monday morning after I came

back from Texas, and they all said the right things, and they all pledged assistance to this. But sustained, continued involvement, they sent consular resources to Texas to help us repatriate some of these kids. So they have devoted their consulate personnel on the border. But you are right. We have got to deal with the underlying conditions in their countries, which is obviously a big undertaking on their part. And we have just got to engage with them on this because there is no other way.

I think a key to this also is the Mexican-Guatemala border, which is the chokepoint. Our southwest border is 2,300 miles long. Their southern border is 130 miles long through which almost all of these kids are passing. And so with the cooperation of the Mexicans and the Guatemalans, if we can help with greater border security along that border, I think it will go a long way. And so that is one of the reasons I am going to Guatemala next month.

Senator FEINSTEIN. Well, I am going to write a letter—and anyone that would like to join me—to the presidents of these countries and just give them the statistics and indicate our great interest in this issue. I mean, we can provide—I have got—Senator Flake has a huge facility in his State, in Arizona, and one is about to open in Ventura in California. I have two people there today. We have alerted your staff to take a look at the facility. But I am really concerned. This is the beginning of an epidemic, and unless safety is restored to these home States and poverty is alleviated to some extent, I see it continuing, because it is hopeless for children. And I would hope that people out there—I see a collar of the Catholic Church—others—would really pay attention to this.

I am certainly willing to be helpful. We can work with the Unaccompanied Minors Act. We can make some changes, I suppose. But it does not solve the basic problem. And so I would ask any Member that would like to join with me in a letter to the presidents of these countries and say, “What are you prepared to do?” I mean, the embarrassment must be enormous.

Do you have any specific actions that these countries might take that we could work to convince them to take?

Secretary JOHNSON. I would be happy to work with you on suggestions for such a communication, Senator. There are a number of things that we are contemplating asking of them, but I would be happy to work with you on those.

Senator FEINSTEIN. Good. Thank you.

Secretary JOHNSON. I would also like to add, Senator, that we have gotten, I think, some terrific offers of help from faith-based organizations who are concerned about the situation in Texas, and that has been a terrific response.

Senator FEINSTEIN. Thank you.

Senator GRASSLEY. Madam Chairman.

Senator FEINSTEIN. Senator Grassley.

Senator GRASSLEY. Before Senator Hatch, I would like to put in the record the interviews that I spoke about in my last question to the Secretary.

Senator FEINSTEIN. No problem. So ordered.

Senator GRASSLEY. Thank you.

Senator FEINSTEIN. Thank you.

[The information referred to appears as a submission for the record.]

Senator FEINSTEIN. Senator Hatch.

Senator HATCH. Well, thank you, Madam Chairman. I appreciate you and all the difficulties that we have had in putting all these matters together. I still remember resolving the agricultural component of the Senate bill in your office under your direction. It was a very, very good job by you.

Mr. Secretary, I commiserate with you. This is a tough job. And if anybody can do this right, I hope with all my heart that you can. It is also an impossible job in some ways because of the failure of Congress to do what really needs to be done here. But even then, it is going to have to take a lot of effort on just about everybody's part to resolve these problems.

And I share the concerns raised by Senator Grassley about the alarming increase in the number of unaccompanied alien children along the southwest borders. The administration is calling this a humanitarian situation, but in my view, the administration's own unilateral actions and permissive approach to immigration enforcement have created this problem. And I am concerned about it because I just do not think—I think the administration has been irresponsible in this regard.

Let me just say this: In April, U.S. Citizenship and Immigration Services confirmed for the second year in a row that the H-1B visa quota was reached within the first 5 days. Now, we tried to solve that in the Senate bill or at least make strides to solve it. Preserving jobs for American workers is important, but a recent study by the Partnership for a New American Economy shows that the H-1B visa cap actually hurts U.S. job growth.

Our time is limited this morning, so I would appreciate, you know, maybe some brief responses to what questions I am able to make. But I know you agree with me on the H-1B visa situation, that we need to solve that problem, too. Or at least I hope you agree with me. If you do not, we are going to have some real talks together.

Senator FEINSTEIN. Senator Hatch, before the Secretary answers your question, I have a French intelligence delegation waiting, and I am going to ask Senator Whitehouse to take over.

Senator HATCH. That would be fine.

Senator FEINSTEIN. I will give him the list, so thank you.

Senator HATCH. Thank you. Okay. The Secure Communities Program is designed to locate, take custody of, and remove criminal aliens. This important program, however, could be rendered useless if local law enforcement agencies failed to turn criminal aliens over to ICE officials. Federal litigation involving immigration detainers is increasing. These are the officials notices from ICE that the agency intends to take custody of an individual from a local law enforcement agency. Now, that litigation is unraveling the cooperation between ICE and the State and local law enforcement agencies.

Do you believe that ICE detainers should be honored by local law enforcement agencies? And if not, how would you keep the Secure Communities Program effective?

Secretary JOHNSON. I have a lot of thoughts about Secure Communities. First of all, immigration detainers themselves go back decades. When I was a prosecutor 25 years ago, we had immigration detainers put on people, so those are not new. The Secure Communities Program is essentially fingerprint sharing between the FBI and the immigration component. That is what it is. There is a lot of misunderstanding about what Secure Communities is.

I believe that the goal of Secure Communities is a good one, which is to promote more effective enforcement against those who are threats to public safety, those who are criminals. I believe it is a worthwhile program. However, it has gotten off to a very bad start. It has a very bad name. There are mayors and Governors out there signing executive orders, passing laws that limit a State or a city's ability to comply with a detainer, and that is an extremely unfortunate situation. They are limiting the ability of our people to do their job.

And so I believe, as I have said before, that we need a fresh start on this program. I am evaluating how to more effectively enforce our immigration laws against those who are threats to public safety, and I believe we need clearer guidance for our people. And with the clearer guidance, I intend to take that to the Governors and mayors to say here is who our enforcement priorities are so that you do not have any uncertainty about that anymore. And hopefully we will do a better job in cooperating with each, because I do believe that the principle is a good one, Senator.

Senator HATCH. Well, thank you. My time is up, Mr. Chairman, and I appreciate you and what a difficult job you have.

Secretary JOHNSON. Thank you.

Senator WHITEHOUSE [presiding]. Secretary Johnson, how are you?

Secretary JOHNSON. How are you?

Senator WHITEHOUSE. Can we talk about cyber for a minute?

Secretary JOHNSON. Yes, sir.

Senator WHITEHOUSE. I have two topics on that. One is quite narrow and specific. DHS is the lead Federal agency that is responsible for working with State and local governments and State and local law enforcement in a variety of ways, but specifically around protecting their information systems. And it appears that there has been a little spate of recent cyber attacks on local law enforcement agencies, and across a lot of this country, small, rural police departments do not have a lot of cyber resources available to them. They do not have even in some cases full-time information officers.

It strikes me that, both from a point of view of kind of creating embarrassment and upheaval in some of the goals of some cyber hackers, or from compromising law enforcement and emergency response, a more serious intent, small police departments make a particularly appealing target. And I wonder where within DHS we can work together on trying to make sure that they have both the resources and the threat awareness and the knowledge that they need to protect themselves, because if, say, CryptoLocker takes out the cyber resources of a small department, including current law enforcement records and police reports and things like that, it can create a very unfortunate situation.

Secretary JOHNSON. Well, first of all, I agree with your observation about State and local government. I also know that more and more Governors and mayors are asking me about this issue. Governor Snyder of Michigan comes to mind, for example. He and I have talked about this several times, and I know that more and more State and local governments have cybersecurity advisers devoted to this. I believe—

Senator WHITEHOUSE. Which NYPD can do.

Secretary JOHNSON. Right. Well—

Senator WHITEHOUSE. Which the Boston Police Department can do.

Secretary JOHNSON. Oh, yes.

Senator WHITEHOUSE. But when you get down to little police departments, I do think that we need to figure out how we organize a common resource that can have their back and be their distant early warning system in a better way than we presently do.

Secretary JOHNSON. My cybersecurity experts, if they were sitting here, I am sure they could tell you about the ways in which we do work with State and local law enforcement. I suspect, but I do not know, through our grantmaking ability we may be able to also support the development of cybersecurity capability in these governments. But I do agree that it is something that is an emerging threat that we all need to focus on.

Senator WHITEHOUSE. I look forward to continuing to work with you on this. This hearing is not the forum for that, but I do think it is important, and I think that there are a lot of, as you said, mayors and Governors around the country who are seeing that this is a particularly unfortunate target to emerge, and a particularly vulnerable one.

The second cyber topic has to do with how we structure our cyber enforcement response. I want to first of all commend what you, what the Department of Justice, what the FBI all do. We are throwing a lot of resources at the problem. We have immense talent being thrown at this problem. We have had some really terrific new steps specifically by the Department of Justice against the PLA hackers and against the two big botnets. So there is great stuff that is going on. But I am not convinced yet that we are doing the thinking that we need to be doing about what our cyber enforcement structure needs to look like 5 years out and 10 years out. And we are so engaged in today's hackers and trying to warn businesses who is coming through the windows and doors at them that there really is not, in my view, a very comprehensive process of what this needs to look like. And this is a threat in transition. It is a growing threat. And I would like to hear your thoughts on the long-term preparedness and the review of what our structure should be to address this threat.

Secretary JOHNSON. Well, first of all, the Secret Service has tremendous capabilities in the investigation of cyber crime. We do it on a routine basis. The Secret Service, for example, is the lead law enforcement agency when it comes to the Target Stores episode. I have had conversations with Jim Comey, whom I have known for 25 years, since we were AUSAs together, and others in the intelligence community and also General Alexander, who has recently retired, about how we answer this exact question. And my view is

that—and I know all these people, either from my AUSA days or from my DOD period. And in my view, if we can sit down together—and this is not a complicated conversation among the three or four of us component heads—to say, all right, how are we divvying this up? What is our strategy going forward? When does the FBI get involved? When does the Secret Service get involved? And when does it become a matter for our national security intelligence resources for our Government?

We can develop a common strategy, and I do not believe it is very hard. I do not believe it is complicated, and it is one of the items on my agenda.

Senator WHITEHOUSE. I will follow up with you on that.

Our next Senator recognized is Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

Well, we are having a humanitarian disaster. There is no doubt about that. And the humanitarian disaster is caused by a legal disaster. Your leadership and the President's leadership has failed to send a clear message throughout the world that you can only come to the United States lawfully; you cannot come unlawfully. In fact, you send the message that conveys just the opposite. It is unbelievable that the top law enforcement officer of our country is doing such a thing.

You have been sued by your own officers, or at least your predecessor, for not allowing them to follow their oath to enforce the law. And under your leadership, it seems to have gotten worse, Secretary Johnson. You and I talked about it. I expressed my concern. I thought maybe it would get better, but actually things have gotten worse. And we are seeing this flood of young people, and it is just tragic. It should not be happening.

The first thing a law enforcement officer should seek to do is to create a climate that reduces lawlessness, not encourage it. You do not want to be in a position of having to arrest more people and deal with more people. You want to not have it happen. It is just amazing to me.

I want to push back a little bit for our Chairman talking about excessive force and violence. I wish you would push back a little harder, Mr. Johnson. But this is the kind of thing that is happening to your Border Patrol agents every day. They are being attacked with vehicles, they are being shot, and they are being pummeled with large rocks. One picture in here is 7 inches in length of the rock that hit an agent. So I would offer that for the record. Lawlessness begets—

Senator WHITEHOUSE. Without objection.

[The information referred to appears as a submission for the record.]

Senator SESSIONS. Lawlessness begets violence. I know in San Diego a number of years ago, 20 or more years ago, they built a fence, and there was violence and lawlessness and drugs. And, afterwards, both sides of the border are prospering, and the lawlessness has ended at that time, and we have done better.

Let me just ask you this: Have you—you did not say in your testimony today and nothing I have seen in your reported statements is a clear message to the world they must not come illegally to America. Have you said that anytime recently?

Secretary JOHNSON. I have told my staff that we need to consider all options to deal with this situation. I rule nothing out that is lawful. I want to know about every option, and I want to consider every option, Senator.

Senator SESSIONS. Well, here in an El Salvador newspaper, the headline is: "Extension of suspension of student deportations." In other words, you extend the suspension of deportations—Secretary Johnson. It says, "Almost all agree that a child who crossed the border illegally with their parents or in search of a father or a better life was not making an adult choice to break our laws and should be treated differently from adult violators of the law."

It goes on—

Secretary JOHNSON. I still agree with that.

Senator SESSIONS. It goes on to say, "The administration of President Obama has launched the program suspending deportations."

Here, another Central American news outlet, the first paragraph says, "Central Americans who illegally cross the border into Mexico say they are arriving at their final destination, that U.S. immigration officials are allowing Central American women and children to freely enter the country." Is that correct or not?

Secretary JOHNSON. I do not believe that is correct, no.

Senator SESSIONS. Well, this is what the lady said. They interviewed her. This is a Spanish publication. "It was easy to get there. I only had to walk 15 minutes with my daughters, and I turned myself in to Immigration but was told that U.S. Immigration—"I was told that U.S. Immigration was letting 'lots of women with kids into the United States.'"

La Prensa in El Salvador, "Obama announced a unified and coordinated Federal response to this program to provide humanitarian relief to children affected, including accommodation, care, medical treatment, and transport." But he did not say—and you have not even said this day right here in this Committee—"Do not come. It is unlawful to come. You cannot come to the country without lawful permission."

So I ask you again, Are you prepared to say that to the whole world?

Secretary JOHNSON. I am prepared to say that a parent should not send a child across our southwest border. It is illegal—

Senator SESSIONS. Well, can a parent bring a child with them?

Secretary JOHNSON. And it is dangerous.

Senator SESSIONS. Because it is dangerous.

Secretary JOHNSON. I said because it is illegal and it is dangerous.

Senator SESSIONS. And will you pledge to enforce the law and interdict and send back people who come to the country unlawfully?

Secretary JOHNSON. I have pledged numerous times to enforce the law, Senator. I do it every day.

Senator SESSIONS. Well, you did not say it in your opening, and you have not been quoted in the papers as saying that.

Secretary JOHNSON. I enforce the law every day, Senator. We are deporting people, according to last year's numbers, at a rate of over 1,000 a day.

Senator SESSIONS. Well, you are familiar with the memo from Deputy Border Chief Ronald Vitiello, I suppose, on May 30th of this year, your own Deputy. Could I ask—you went over about to a minute and 12. It is 50 seconds over now. Could I ask for one additional minute, Mr. Chairman?

This is what Mr. Vitiello wrote, your own Deputy: “If the United States Government”——

Secretary JOHNSON. Is that a draft or is that——

Senator SESSIONS [continuing]. “Fails to”—you probably—that was his draft. Yes, you probably altered it or had it altered. He said, “If the Federal Government fails to deliver adequate consequences to deter aliens from attempting to enter illegally the U.S., the result will be an even greater increase in the rate of recidivism and first-time illicit entries. Releasing other than Mexican family units, credible fear claims, and low-threat aliens on their own recognizance, along with facilitating family reunification of unaccompanied alien children in lieu of repatriation to their country of citizenship, serve as incentives for additional individuals to follow the same path.”

He goes on: “To stem the flow, adequate consequences must be delivered for illegal entry into the United States and for facilitating human smuggling. Either as a direct member of an illicit alien-smuggling organization or as a private facilitator, these consequences must be delivered both at the border and within the United States.”

Do you agree with that?

Secretary JOHNSON. As I said in my opening statement, to deal with the situation in South Texas, we have had to surge resources that are normally devoted to other tasks. We are now calling upon the entire Federal Government to address that situation so that my Border Patrol agents can go back to patrolling the border.

Senator WHITEHOUSE. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Senator Whitehouse, and thank you very much, Secretary Johnson, for your work. I was just down in Mexico with Senator Heitkamp and Cindy McCain on that very important issue of sex trafficking as well as heroin trafficking, met with the head of the Federal police, met with the attorney general, and we talked about this issue at length. And I also have appreciated the efforts that Mexico is starting to make, which is very necessary to this, which is to secure their own southern border in addition to the work that has been going on to try to go after the drug cartels and the capture of El Chapo and some of the other work. But there is clearly work to be done.

But I wanted to take you farther north because one of the things that I certainly learned when I was down in Mexico is one way out of this violence and the things that are going on down there is to have a stronger North American economy, what we are calling “A New Day in North America,” which means more and more regional coordination between Canada, America, and Mexico. As we compete with countries like China, I think this is a major part of our economic growth to bring more jobs to America.

So every single day we have 300,000 people crossing the U.S.-Canadian border. Every single day two-way cross-border trade between our nations amounts to \$2 billion a day. They are our major

trading partner, Canada, \$2 billion a day in trade. Three-quarters of Canada's goods are now sold in the U.S., and in turn Canada is the number one buyer for goods produced in 36 out of 50 States in this country. Yet we have some border issues with Canada, and they are not the border issues we have been hearing about. They are border issues about making it as easy as possible to facilitate the movement of people and goods with our number one partner—our number one partner in dealing with the Ukraine, our number one partner when dealing with security. And I know you understand this.

One of the things, having just been in Canada this weekend with Senator Blunt and Senator Crapo and Senator Sessions, as well as Senator Stabenow, we as part of the Interparliamentarian Group identified some infrastructure issues on the border. And over the past 2 years, U.S. Customs and Border Protection has received authorizations from Congress to initiate pilot programs to enter into public-private partnerships and actually accept private donations to help improve the efficiency of border crossings.

I am concerned that these border crossings are—right now the grants have been given solely on the southern border, and we have—for instance, the land port of entry in International Falls, Minnesota, was built in 1993, and it has been deemed in need of replacement by the CBP, the Customs and Border Protection, and the General Services Administration.

We are really interested in this public-private partnership. Obviously with the energy and the oil and everything else coming from Canada, as well as the trade and the agriculture trade going on, we think this is a smart investment in America's economy.

Could you talk to me about why these programs are only in place on the southern border? And can you commit to adding northern border sites for these partnerships as soon as possible?

Secretary JOHNSON. Yes. A big part of my job, notwithstanding everything we have talked about so far in this hearing, is promoting lawful trade and travel, particularly in North America. I have had conversations along with our President, with the Mexican President, with the Prime Minister of Canada at the summit that took place in Mexico in February, I believe it was, or March. I have had conversations with Minister Blaney, Minister Raitt in Canada, about facilitating, promoting trade and travel. It is a big part of this administration's agenda to develop trusted traveler programs. The President signed an Executive order on a single path for export-import purposes into our Federal agencies. And I have personally visited Detroit and Port Huron to—

Senator KLOBUCHAR. You are aware of the Windsor Bridge issue, which is another problem.

Secretary JOHNSON. I have walked on the Windsor Bridge.

Senator KLOBUCHAR. We are close to getting that resolved.

Secretary JOHNSON. And I have seen the tractor-trailer backup on the bridge in Port Huron. And I have seen the situation in Detroit, and I believe that we need to expand the customs plaza capability in Port Huron, for example, and I think we need to build a customs plaza in Detroit one way or another. And public-private partnerships I think are a good and creative way that we should

explore. We need to get this done. I am impressed by the fact that the Canadians have stepped up to this, and—

Senator KLOBUCHAR. They have completely stepped up to help pay for that bridge and are really interested in this. They are doing a lot with public-private partnerships for their own infrastructure and are interested in this idea, and I really think we cannot just be putting them at the southern border. This is not as much as I said about security as it is about facilitation.

I have one last question. You have probably heard about those current plans call for the current USCIS field office in Bloomington, Minnesota, to move to a location that is 3 miles from the nearest public transportation option. USCIS field offices provide critical services, as you know, immigration services, and I think you heard what happened here. They have apologized. The GSA made a major mistake. They saw a sign for a bus, and they thought it was a public bus, and there is really no bus service to that area.

They have been helpful in meeting with us, and could you talk about it, as we are looking at legislation to make sure that USCIS field offices are accessible for the immigrant and refugee communities that they serve, what your views are on this? And we are currently trying to see if there is any way to dial this back, because it really was a mistake.

Secretary JOHNSON. I have talked to Senator Franken about this. I am aware of the issue with this particular office, and I agree that people should be encouraged to go to CIS offices for just about every reason imaginable. So I agree they need to be accessible one way or another. And I will look at this particular situation.

Senator KLOBUCHAR. Okay. I understand. And, again, I appreciate your good work. Thank you.

Secretary JOHNSON. Thank you.

Senator HIRONO [presiding]. Senator Cornyn.

Senator CORNYN. Thank you.

Mr. Secretary, good morning. Good to see you.

Secretary JOHNSON. Good morning.

Senator CORNYN. Would you agree with me that the transnational criminal organizations that traffic human beings into the United States do not discriminate between economic migrants and people who they traffic for sex or other illegal purposes? Would you agree with that?

Secretary JOHNSON. That sounds right. I am not sure I know the answer to that one. It sounds right.

Senator CORNYN. Well, they are in the business to make money.

Secretary JOHNSON. They are in the business of making money, yes, sir.

Senator CORNYN. Guns, drugs, people, children, adults. They do not really discriminate. And I think there is this misconception that somehow there is good illegal immigration and bad illegal immigration in the sense that somehow these are separate pipelines, when, in fact, my impression is, to my knowledge, it has now been taken over essentially by transnational criminal organizations, largely the cartels in Mexico. And all of the horrors that you know and that I know and that others know that these unaccompanied children are subjected to, they are subject to the tender mercies of these traffickers.

So I want to really ask you about two things. You came to my office recently after doing some investigation of the detentions along the U.S.-Mexican border, and I appreciate the acknowledgment that you recognize this is a national security issue as well. In fact, 414,000 people were detained at the southwestern border last year from more than 100 different countries. Do you agree with those figures?

Secretary JOHNSON. Yes. As you and I have discussed, on the southwest border and the Rio Grande Valley in particular, we are seeing an increasing number of illegal migrants coming from virtually all over the world, including other continents. And it is an increasingly diverse population.

Senator CORNYN. Well, I appreciate your acknowledgment of that and your investigation of the facts.

Let me turn now to the humanitarian crisis of unaccompanied minors. There have been several references to the internal summary prepared by agents in the field concerning the recent surge of unaccompanied minors. When asked why they chose at this time to migrate, an overwhelming majority said it was to take advantage of a new U.S. law that grants a free pass to unaccompanied children and female adults traveling with minors.

Now, it appears the free passes that they are referring to, permisos, are the notice to appear. In other words, when people are detained, they are given a notice to appear at their court setting. I am told by Border Patrol that 90 percent of them never show back up. But the high percentage of subjects interviewed stated that their family members in the U.S. urged them to travel immediately because the United States was only issuing immigration free passes until the end of June 2014.

So you previously acknowledged that there is no legal way to enter the United States—there is no free pass under the law. Is that right?

Secretary JOHNSON. Well, there is a legal way to enter the United States. The migration we are talking about here is not legal.

Senator CORNYN. Thank you for—you are right. Thank you for correcting my statement. I meant there is no way for these unaccompanied minor children to legally enter the United States in the way that the 47,000 that have been detained since October have been doing.

Secretary JOHNSON. That is correct, yes.

Senator CORNYN. Okay. And so I would just suggest to you there is this perception that the executive branch of the Federal Government is not enforcing the law because of talks about easing deportations—or “repatriations” I think is the nomenclature you use, and the perception is that there are no consequences to illegally entering the United States. And if that is the perception, the flood of humanity will continue and contribute to this humanitarian crisis that we have been talking about this morning.

I would just suggest to you that, as you deliberate these matters and as you consult with Congress and the President, this is one of the biggest obstacles to immigration reform because if the perception is both domestically and in other countries that the Federal Government is not committed to enforcing our own laws, then this

flood will continue and the divide and the distrust will grow even more.

One final point. If this entry of 47,000 children who have come unaccompanied who have been detained since October is not legal under U.S. law, I do not understand the argument that if we just somehow pass the Senate immigration bill that it would have a positive impact on this humanitarian crisis. You are not suggesting that we need to pass some other law that would have prevented this humanitarian crisis, are you, sir?

Secretary JOHNSON. Well, first of all, the document you read from, I have never seen. It is supposedly a draft document. I do not know that I agree with the assessment there.

Senator CORNYN. Well, they are interviews with 230 of the people detained coming across the border.

Secretary JOHNSON. I have never seen the document so—

Senator CORNYN. Will you take a look at it and tell us whether you think it is authentic?

Secretary JOHNSON. Enough people have referred to it that I am sure at some point soon I will take a look at it.

Senator CORNYN. I hope so.

Secretary JOHNSON. I am not sure I agree that that is the motivator for people coming into—for the children coming into South Texas. I think it is primarily the conditions in the countries that they are leaving from.

I do believe that if comprehensive immigration reform is passed, the uncertainty that may be existing in people's minds about our law gets resolved, and it will be clear to people that the earned path to citizenship that is being contemplated in the Senate bill only applies to people who came here before year-end 2011. The same thing with DACA, DACA refers to people who came here in the year 2007. It does not refer to people who came here today or yesterday. So the perception I do not think is correct.

And I also know that anyone who is apprehended on the border is a priority for removal. They are Priority 2.

Senator CORNYN. Mr. Secretary, this is my last question or statement. I would suggest that as a person who believes that we need to pass a bill to fix our broken immigration laws, the single biggest impediment to collaboration between Congress and the executive branch to get that done—we may not agree about the details, but we all, I think, agree on the need to get to that solution. The biggest impediment is the perception that the President and this administration will not enforce whatever laws that Congress were to pass. So that is a real problem, and in its instance it has helped induce this humanitarian crisis and this flood of unaccompanied children that is very dangerous to them and their families and created a real crisis.

Thank you for your response to my questions.

Senator HIRONO. Before I call upon Senator Coons, I would like to just ask everyone to be aware of the time limits for our questioning because there are people who are waiting.

Senator Coons.

Senator COONS. Thank you, Senator Hirono, and thank you, Secretary, for your service, for your leadership of the Department, and for your testimony here today.

I want to touch on a number of different issues: ag inspections at the border and at ports, cyber crime and its cost to the U.S., and a number of issues that relate to deportation practices. Let me start with those, and these are issues we have discussed before, and some of these are questions I have asked your predecessor, but I just want to make sure I am getting an appropriate update on where we are.

First, in deportation proceedings, aliens are not routinely provided what is called the "A-File," but instead have to file FOIA requests, and this extends the cost, the difficulty of deportation proceedings without affecting the outcome.

Has DHS begun to routinely provide A-Files to aliens facing deportation?

Secretary JOHNSON. Senator, you are correct. That is something you and I have discussed previously. I do not know the status of that issue right now, but I can get back to you.

Senator COONS. I have also discussed with you and your predecessor lateral repatriation, which is a polite way of describing nighttime deportations that often put children and women at risk, put particularly vulnerable folks facing deportation into dangerous locales at very difficult times into very bad circumstances, and I think it violates basic human rights and some of our international agreements. And I wondered if DHS has implemented procedures to ensure that deportations are done in a manner that does not jeopardize the lives of repatriated migrants.

Secretary JOHNSON. We are actually working with the Mexican Government right now on that issue. This has been the subject of discussions between our two governments. Often it involves a matter of logistics, coordination, and so forth. And we also have a policy going back to 2004 that we not separate families or remove vulnerable population at late-night hours, which I believe is a good policy and I intend to reiterate it.

Senator COONS. Well, thank you. I have heard from the faith community, from advocates, that they continue to see significant impact on vulnerable families due to the policy, and it has not had an appreciable positive impact.

Last, on the list of sensitive locations for enforcement actions, courts are not currently on that list, and I have received to me some concerning reports that immigration enforcement which occurs right at or around courthouses deters women from seeking protection from abuse orders or folks who are applying for relief from landlords. And I just wondered what steps DHS has taken to assess the appropriateness of enforcement actions taken at courthouses and to ensure that they are only taken in exceptional circumstances where there is some case-specific justification rather than in the broader range of cases that deters access to justice and deters some of the important things I referenced, prevention of domestic violence.

Secretary JOHNSON. You are correct that courthouses have not been on the sensitive list. I know that some months ago ICE determined to put courthouses in a special category deserving of some sort of special treatment. I agree that courthouses are special places in the nature of a church, but I can readily see for reasons of public safety why any law enforcement officer would feel com-

pelled to take action with regard to an individual at a courthouse, and I have asked our folks to better develop that exception with regard to courthouses.

Senator COONS. Thank you, Mr. Secretary.

We have also talked about Customs and Border in terms of overtime for inspections that are related to agriculture. The Port of Wilmington and many other ports have folks who would like to pay overtime so that when whole shiploads of produce arrive, they can get inspections in a timely fashion. And this is subject to a very complicated interagency budgetary issue. My understanding is that ag—we have made progress in terms of promulgation of the relevant regulations that would now allow fee increases for overtime services. Is this something that, to your understanding, CBP inspectors are able to work with the Department on and you are hopeful we are going to make some progress before this very busy upcoming fruit season?

Secretary JOHNSON. I believe so.

Senator COONS. That would be great.

A last question, if I might, on cyber crime. Cyber crime is an area of primary focus for you and for the Department. It causes enormous costs, negative impacts on our society every year. I recommend to you the role that the International Guard can play in terms of providing a qualified work force that is able to be a resource both for national security purposes and for State and local preparation reasons. I just wondered how the National Guard model fits into the Department strategy, your strategy, to meet the threat posed by cyber crime and potential cybersecurity threats.

Secretary JOHNSON. The International Guard.

Senator COONS. Yes, the 166th Network Warfare Squadron would welcome a visit any time in New Castle, Delaware.

Secretary JOHNSON. Okay. That is a worthwhile inquiry. I will look at that, sir.

Senator COONS. Thank you, Mr. Secretary. I look forward to following up with you on all of these issues.

Secretary JOHNSON. Thank you.

Senator HIRONO. Senator Flake.

Senator FLAKE. Thank you. I appreciate you being here. I appreciate what you are doing.

My questioning comes, as you know, this comes from someone who is supportive of immigration reform. As a Member of the Gang of Eight, I am proud of the legislation we passed. I hope that similar legislation or some legislation can pass the House and we can get this done. But I just want to follow up on some of the questioning that some of my colleagues have done about the motivation of people coming. When you look at the numbers, it is just staggering, as you have said, and it has created a humanitarian disaster. When we involve FEMA, as you mentioned, for something like this, this denotes a disaster. And we ought to be looking at the causes of it. And we know some of the causes. As you explained, the economic situation in these countries, the drug activity and cartels and unsafety and gangs certainly leads to it.

But to reject out of hand, which you seem to be doing, that the perception of lax enforcement is not a motivator in this regard I think is naive at best and very destructive at worst. And when you

look at the numbers, these are OTM apprehensions or other-than-Mexican apprehensions, mostly from the three countries that we talked about: October of last year, 14,000 during that month: November, 14,000; December, 14,000; January, 12,000; February, 16,000. So relatively straight. And then comes March, right around the time of the deportation review that was undertaken by the administration, word like this spreads, and word spreads that there will be a review of deportation.

And then we look, March OTM—remember, it stayed steady at around 14,000 until March. Then March, 24,000; April, 26,000; May, 38,000. Can you just allow a little that it might—there might be a perception that lax enforcement might be some motivator for people to come here?

Secretary JOHNSON. I cannot control people's perceptions, and I do not have a categorical sense of people's perceptions in Central America. I do believe, Senator, that what is principally motivating this migration are, as you noted, the conditions in the Central American countries. I also believe that people are aware that when their kids come into this country unaccompanied, we are required by law to give them to HHS, and HHS is required by law to act in the best interests of the child, which very often means reuniting them with the parent. I think they know that. That is what the law requires us to do.

Senator FLAKE. I think they do as well, and when you look at the interviews, you read the interviews that are being conducted and you see the statements of people saying they are waving down helicopters when they see a Federal helicopter, waving them down, rushing to Border Patrol agents, and saying, "Take me." There is a perception—there is a perception of lax enforcement that will allow them to get a foothold here. And that, I would submit, is one of the motivators, and a big one, in why we are having such a massive increase in unaccompanied minors and people from these countries that we are talking about.

I do not think this is a blow to your ego, but what you say on these matters in those countries to these Ambassadors or to media outlets in Guatemala or El Salvador and Honduras does not matter as much as what the President says. And it would be extremely helpful, in my view and the view of many—and Senator McCain and myself just sent a letter to the President today pleading with him: Make a statement. Let people know that those who are coming now are subject to deportation, that these—that DACA and these other rules that may be reviewed will not apply to people coming now. Do you think that that would be a good idea for the President to make such a statement and for us to follow with public relations efforts in these countries?

Secretary JOHNSON. Well, first of all, nothing anymore is a blow to my ego.

[Laughter.]

Secretary JOHNSON. I do think that a robust public relations campaign in some form is vital. I do agree with that.

Senator FLAKE. All right. Well, you agree—

Secretary JOHNSON. Whether it is the President or—

Senator FLAKE [continuing]. That it needs to start with the President—

Secretary JOHNSON. Officials from their own countries or what have you, I do believe that a robust, aggressive public relations campaign needs to be part of our strategy.

Senator FLAKE. I hope that is the case, and I have many questions about what is going on in Arizona. I just was struck by one thing you said. You said that you hoped that the Border Patrol can go back to patrolling the border, and that is extremely disturbing to those of us on—you know, in border States, that how many Border Patrol agents are being pulled from Border Patrol to processing unaccompanied minors or others. What percentage of the force is being pulled away from those duties in Arizona and Texas?

Secretary JOHNSON. I do not have an exact percentage. I know that we have had to surge resources to process these kids. Plainly, there are still plenty of people on the border conducting Border Patrol activities, and I believe that with the added resources we are getting from other agencies, these folks are able to return full-time to their normal responsibilities.

Senator FLAKE. Let me just close saying I hope that the President in particular, and you as well, will make such a statement, continue to make such a statement, and then launch a public relations effort in these countries, letting them know that people who come here will be subject to deportation, that they will not be able to participate in either the policies that the administration has pursued or the legislation that this body, the Senate, has passed and that the Congress will hopefully pass.

Thank you for your work.

Secretary JOHNSON. Senator, if I may, one other thing I wanted to add, Senator Flake. I remember from the QFRs you sent me in the confirmation process, the statements of your constituents, the ranchers. So one of the first things I did when I got into office is I went to visit them in Arizona, and I think it is fair to say we had a good visit, good conversation. I wanted to understand their border security concerns, so I went down there, and they are a terrific bunch of people.

Senator FLAKE. Well, let me just say they appreciate that. They told me that, and I appreciate, and my office does, the manner in which you have answered questions. This is a bit of a departure from what we have seen before, and I am very happy to see that and have been pleased with your response and the seriousness with which you take this job. So thank you.

Secretary JOHNSON. Thank you.

Senator HIRONO. Thank you, Mr. Secretary. Clearly, all of us are concerned about the influx of unaccompanied minors crossing the border, and it is a multifaceted problem with no easy solutions leading to a Level 4 condition that you have declared.

I would like to ask you in the coming weeks to work with me and other colleagues who are interested in enabling us to travel to see some of these facilities. I think that would enable us to really better understand and grasp the enormity of this crisis situation.

Turning to prosecutorial discretion, I am looking at your Morton memo which enumerates some 19 factors in exercising prosecutorial discretion regarding numerous immigration procedures, including deportation. And of the 400,000 or so deportations that DHS is carrying out each year, do you have data on how many of

these are people who are being deported who could receive prosecutorial discretion, exercise of the prosecutorial discretion based on things such as family ties or community ties?

Secretary JOHNSON. There are ways to make that statistical assessment, and we are in the midst of doing that right now as part of my review of our enforcement policies. I think that the data in years past has not been as clear as it could be. One of the things I would like to do is to make the data clearer, be a little more forthcoming each year, and correlate the data to the individual priorities in the Morton memo so that we all have a clearer sense for whether somebody is being removed who is a Priority 1 or Priority 2 or Priority 3. So I think we can do a better job there.

I also think we need clearer guidance, so when you say the Morton memo, for example, it is unclear to me whether you are referring to the March memo or the June memo of 2011 or a whole other series of memos that have—

Senator HIRONO. Well, there are various iterations of enabling your agents pretty much across the board to exercise prosecutorial discretion, and so I would really like to understand, of the 400,000 or so deportations, you know, who actually are being deported, because, for example, I get concerned when recent reports indicate that the ICE field office in Detroit is placing people with strong family ties, without any criminal record, into deportation proceedings. So it is kind of reminiscent of what has been coming out regarding the Veterans Administration. It is one thing to have a policy directive such as the Morton memo, but it is another as to what is actually going on out in the field and the exercise of that discretion.

I recognize that the Morton memo also says that these are guidelines and that your agents have—you know, can prosecute people who are here illegally. But I think in terms of scarce resources and your establishment of priorities of how we ought to be enforcing our law, it would be good for us to have that kind of breakdown from you. So I would like to request that.

Secretary JOHNSON. Well, one of the things that I have learned from my Department of Defense experience is clear guidance is indispensable. If you do not issue clear guidance to the field, then how it is implemented is not going to look at all like what you intended. So DOD, whenever they issue new guidance, they always socialize, train it to the field down the chain of command. And so I have spent a lot of time talking to our work force about how to better implement policy changes that are issued in Washington, how to socialize them, and I am determined to do a better job in that regard.

Senator HIRONO. Good. My understanding is that under the DACA program some 500,000 young people have come forward to participate, and many of them are now in the renewal process, I believe, because DACA has to be renewed every 2 years. So I understand that your Department is suggesting that applicants apply for renewal up to 4 months before the expiration of the 2-year term, so I know that that is to give them enough time so that there is no gap which would subject them to deportation and other kinds of action.

So what is your Department doing to ensure that renewals are handled expeditiously? And what is your Department planning to do if processing delays lead to lapses in the status?

Secretary JOHNSON. We have been preparing for this for some time now, and one of the things we are doing is we are not requiring individuals to submit all the same documentation they submitted 2 years ago unless there has been some new event in their life like a criminal conviction or something. But we are not requiring individuals to go back and submit the very same paperwork all over again. And you are correct that we had over 600,000 applicants 2 years ago; about 500 applications were granted. That is a large number of people that we were able to get through the system. And so I believe that in the renewal process, you know, that good work will continue.

Senator HIRONO. I would like to stay in touch with you regarding how that is going, because half a million, that is a lot of people. Thank you very much.

It is Senator Lee's turn.

Senator LEE. Thank you, Madam Chair, and thank you, Secretary Johnson, for joining us today.

Secretary JOHNSON. Nice to meet you.

Senator LEE. And thank you for your efforts on behalf of our country. You have got a tough job.

One attribute of this administration that has caused a lot of people concern is a tendency that some have observed within the administration to, in effect, modify existing statute by Executive fiat, sometimes through Executive order, other times through Executive memorandum within a particular department.

Now, as you know, in *Youngstown Sheet & Tube v. Sawyer*, Justice Jackson came up with this three-part analysis that is pretty simple and can be applied to a lot of circumstances. It was reiterated by the Court again in *Dames & Moore v. Regan*, and the basic analysis is that in Category 1, when the President acts pursuant to authorization by Congress, his power is said to be at its zenith. His power is said to be at its twilight, in sort of a twilight zone, where it can be a little bit unclear when the President acts either in the absence of a particular congressional authorization or in the absence of a particular congressional prohibition. The President's authority, Justice Jackson explained, is at its lowest ebb when the President acts in a manner that is inconsistent with—is prohibited by Congress in a statutory directive.

Now, using theories of prosecutorial discretion, the Morton memoranda that were described earlier in the DACA program have been criticized as an effort to mount a de facto legislative implementation of certain legislative proposals that were considered and rejected by Congress, that Congress has not ever adopted, because, as implemented, they effectively, I am told, are telling agents if an immigrant meets these certain qualifications, if these characteristics are present, we do not want you enforcing the law.

Would you agree that if that is the case, to the extent that is the case, assuming hypothetically that it could be the case, where would that put us in Justice Jackson's three-part analysis?

Secretary JOHNSON. First of all, I wrote a paper about *Dames & Moore* in law school. My recollection is that it was a decision of the Supreme Court in 1979 or 1980 concerning Iran—

Senator LEE. 1981. Close.

Secretary JOHNSON. Yes. What you laid out I have quoted often when I was the senior lawyer for the Department of Defense in the war powers context. Presidents' war powers are at their zenith when he is acting—committing the military pursuant to statutory authorization, and so we applied and construed the AUMF a lot while I was the General Counsel of the Department of Defense.

I see the Morton memo—and I believe that the Morton memo guidance could be clearer, but I very much believe in the notion of prosecutorial discretion. And in my conversations with the ERO work force, we have all agreed that they should be devoting their time and effort and resources that they have to going after enforcing against the worst of the worst. And the question is: How do you do that? How do you find the worst of the worst? And where do you draw the line?

Senator LEE. And, of course, that is why prosecutorial discretion is necessary, because we have scarce Government resources. You cannot expect people to do it all.

Secretary JOHNSON. Correct.

Senator LEE. Normally, as you know, based not only on the position you now hold and the one you have held in the Department of Defense, but also your former position as an Assistant U.S. Attorney earlier in your career, prosecutorial discretion usually means discretion, and it leaves a significant amount of discretion in the hands of the prosecutor to figure out where best to allocate those resources.

Secretary JOHNSON. Or his boss.

Senator LEE. Right, or the prosecutor's boss. But where you have got a directive, assuming there is such a directive—as I have been told, the directive is being carried out in this fashion. Where you have got agents on the ground being told, "Do not enforce the law in this entire category," I think that is a little bit different than prosecutorial discretion, isn't it? Isn't that a mandate not to enforce the law?

Secretary JOHNSON. Well, when I was an AUSA in the Southern District of New York in 1989, 1990, 1991, we used to make an effort to get to at least 1,000 indictments a year, and there would be a big push toward the end to try to get over 1,000. You could do that very easily if you prosecuted a lot of marijuana cases, but we were not focused on marijuana. We were focused on the crack epidemic going on in New York City. And if we had focused on marijuana cases, we would get to 1,000 indictments by the month of March probably. But that would not be the most effective enforcement of our Federal narcotics laws.

And so I think that that principle translates into the removal enforcement context, and I believe very much that we can and we ought to be able to do that. The question is how and where do you draw the lines and where do you prioritize and where you do not. I do not think that that necessarily amounts to and I do not believe it has amounted to simply declaring off limits large categories of people.

Senator LEE. I understand the point, and I see my time has expired, and so I am going to need to wrap up here. But my concern is that when you have a national memorandum with national impact and when agents, I am informed, are being told on the ground, "Do not enforce the law where these circumstances are present," that is meaningfully, legally, constitutionally different than what you have described, where an individual office has only so many prosecutors or so many agents and so many resources to devote. And they maintain some true discretion to decide how, when, whether, to what extent to enforce laws, what circumstances are going to trigger the use of those resources.

But, again, what we are talking about here is a national memorandum that I am told is being implemented nationally in a way so as to just write off entire provisions of Federal law. To the extent that is happening, that is very troubling and very different than what you described.

Thank you, Mr. Chairman. I see my time has expired.

Senator BLUMENTHAL [presiding]. Thank you.

Senator Durbin.

Senator DURBIN. Thanks, Senator Blumenthal.

Secretary JOHNSON, thanks for being here.

Secretary JOHNSON. Good morning.

Senator DURBIN. I would like to address an aspect of the unaccompanied children's issue, and I do not know if it has come up during the course of this hearing. I think it should. There are undoubtedly many reasons these children are crossing the border. Sonia Nazario, an L.A. Times writer, won a Pulitzer Prize for her book "Enrique's Journey." That book explained what she believed to be the reason why 75 percent of the children were coming across the border. She was referring to some 48,000 children as young as 7 years of age crossing our border, over half of them by themselves. And the reason they were crossing the border was not on its face obvious. It was not something said by the President or by Congress or by a politician, or maybe the things that might first come to mind. They were looking for their mothers. Looking for their mothers. And that, I believe, has led them to do things that are unimaginable to those of us with children or grandchildren, to think that a child as young as 7 would hop a freight train.

And what they found as a result of looking at this, at the University of Houston, they found that these kids, as they were coming into the United States, were cold, hungry, helpless, half of them unaccompanied, hunted like animals by corrupt police bandits and gang members. A University of Houston study found most had been robbed, beaten, raped, usually several times, some killed, some maimed by these railroad trains.

That to me cannot be overlooked in this conversation. And before we start asking for pronouncements from the President, let us stop and reflect as fathers and grandfathers about these babies and these children who are desperate to find their mothers in America. If this is not a searing indictment of our broken immigration system and the need for change, I cannot think of anything that is.

And I want to thank Senator Flake. He and I sat together for many, many months working on a comprehensive immigration bill, and we gave and took back and forth. And your heart is in the

right place, Senator. And though we may come out a little differently on this issue, I know where you are because you and I both voted for that bill. And now we have got to pass that bill. But in the meantime, some things are happening.

When you came to see me on your path to this position, I asked you for two things. I asked you to come to a detention facility and to meet those who were about to be deported from the United States. And you said you would, and Friday you are going to, in Broadview, Illinois, at the Broadview Detention Facility just outside Chicago. I welcome you, and I will be there to greet you on that visit, and you will meet with some local people and share your thoughts about the current deportation policy.

The President has said he wants Congress to act on comprehensive immigration reform, and he is basically withholding decisions that can be made by the Executive in the hopes that Congress will do this before the end of July. In the meantime, I hope you are in the process of reviewing our deportation policy. What can you say to us today about these deportations?

Secretary JOHNSON. First, I look forward to visiting the detention center in Chicago. The whole reason I am going is because you mentioned this to me when we had our first visit together, and I believe very much in the role that I should have reviewing our detention conditions. It is something I did at DOD. It is something I intend to continue to do. The one we are going to Friday is not the first one I have been to. As I mentioned in my opening statement, I have been to McAllen Station, Texas, with my wife, who is sitting right there, to see these children on Mother's Day. And one of them told me something almost exactly like what you said. I asked her, "Where is your mother?" And she said, "I do not have a mother. I am looking for my father in the United States." So I have encountered this in a very personal way, and I understand it.

The review that I am undertaking is comprehensive. I am talking to our work force about our policies and how they believe we can more effectively implement our policies. And I am also talking to large groups of people on the outside, across the spectrum, on better, more effective, fairer enforcement policies.

I believe we can do a better job, and I believe we can have clearer guidance, and I believe we can better train it to the work force so that what we intend to be implemented is, in fact, implemented. And that is my overarching goal, Senator.

Senator DURBIN. Well, I thank you for that. And the statistics that come back that suggest over 40 percent of those deported have no criminal record—at least that was the case a few years ago. Those with criminal records I am not pleading for. They have lost their right, as far as I am concerned, to even be considered at this moment. But those without criminal records and technical immigration violations, many times we are breaking up families—families where many American citizens are in that household, children and spouses, and families are being broken up. And I think we are better than that. I think we can keep America safe, we can honor our laws, and yet enforce them in a fashion that is truly American, a nation of immigrants that should be proud of its heritage. And I thank you for your public service.

Secretary JOHNSON. Thank you.

Senator BLUMENTHAL. Thank you, Senator.

Senator CRUZ.

Senator CRUZ. Thank you, Mr. Chairman. Mr. Secretary, thank you for being here. Thank you for your service.

Secretary JOHNSON. Good morning.

Senator CRUZ. There is no job more important in the administration than protecting our homeland, so I appreciate your service in this very important role.

I would note, as we discuss immigration, I myself am the son of an immigrant from Cuba, and I am a passionate advocate for legal immigration. Indeed, there is no stronger advocate for legal immigration in the U.S. Senate than I am.

But at the same time, I think much of the discussion of immigration ignores, disregards the humanitarian crisis that is caused by illegal immigration. As you know, I represent the State of Texas, and in the State of Texas, immigration is not something abstract and theoretical that we read about in the newspapers. Immigration is something that as Texans we deal with every day, and illegal immigration is something that as Texans we deal with every day.

The humanitarian crisis that comes from our failure to secure the borders is staggering. In 2013, the Border Patrol reported the emergencies and crimes it encountered. And most of the cases where those who came here illegally were the victims. So there were 2,346 rescues, 461 assaults and 445 deaths. Indeed, last year I received a letter from one of my constituents in Brooks County, a veterinarian who has worked with ranchers, Texas ranchers, Mexican ranchers his entire life. And this veterinarian wrote, "I live on a Brooks County ranch with my wife. In 2012, 129 bodies of deceased illegal aliens were found in our county on private ranch land. Most of those bodies were found within 15 minutes of our front door in any given direction. We believe those bodies represent only 20 to 25 percent of the actual number of illegal immigrants dying in this area. In 1 week of last July, I personally rescued 15 people—most were Central Americans—that were lost and close to dying from dehydration and heat exhaustion. That same week I found a deceased person that had been laid across a dirt road in order to be found. He was a 31-year-old man from El Salvador."

This is a humanitarian crisis that we have a legal system in place that is failing to secure the border and that is incentivizing people crossing illegally.

And, second, we have a particular humanitarian crisis with respect to unaccompanied minors. That is a crisis that is the direct consequence of policies of the Obama administration.

In 2011, there were roughly 7,000 unaccompanied minors who were apprehended. In 2012, that number rose to 14,000. In 2013, it rose to 24,000. And in 2014, your agency is estimating it is going to be as high as 90,000. In 2015, the administration is estimating that it will rise all the way to 145,000.

Now, it is important to understand what these numbers represent. These numbers represent children, little boys and little girls that their parents are handing over not to some noble social worker trying to help them. They are handing over to international global criminal cartels that smuggle human beings in. They put these kids, among other places, on top of fast-moving freight trains.

These are criminals who sexually assault, who physically assault, and who sometimes murder these children. These are little girls that are sometimes being sold into prostitution and sex slavery.

Now, Mr. Secretary, you testified to this Committee that the increase is a result of violence in Central America, and there is surely violence in Central America. But if you look at the statistics, in particular, you can see where they were—these are unaccompanied minors in 2011 and 2012. Midway through 2012 was when the administration unilaterally granted amnesty to some 800,000 people who had been minors, the so-called DACA proceeding. And you can see shortly after that the numbers spike dramatically.

Is it really your testimony that granting amnesty to some 800,000 people who came illegally as children had no effect in causing a dramatic increase in children being handed over to international cartels to be smuggled in here illegally?

Secretary JOHNSON. Well, first, DACA is not amnesty. It is deferred action.

Second, DACA applies only to people who came into this country as children prior to June 2007. That was 7 years ago. DACA does not apply to anybody who comes into this country today, tomorrow, or yesterday.

The earned path to citizenship contemplated in the Senate bill does not apply to anybody who comes into this country today, tomorrow, or yesterday. It applies to people who came into this country by year-end 2011. I believe, Senator, that the primary motivator for this spike in migration—and I am not a sociologist, I am not an expert—is the situations that Senator Durbin and others have laid out in these countries.

Senator CRUZ. Mr. Secretary, my time is expiring, but with all respect, in my view that argument is a red herring. That argument explains why we have seen an increase in Central American immigration, to be sure, because of the problems and challenges those nations are facing. But it does not explain the unaccompanied minors. In 2011, 15 percent of the OTMs, of the other than Mexicans, apprehended were unaccompanied minors. In 2014, that number has grown to 37 percent. There is nothing about the violence in Central America that would cause people to be handing over their children, little girls and little boys, separately. It will cause more people from Central America to come here, but not the kids.

And I will say this in closing because my time is expiring. It has been widely reported that President Obama, that the administration is contemplating yet another amnesty like DACA, like 2 years ago, just a couple of months before the upcoming election. And I will say to you and I will urge you to pass on to the President that I think that would be a grave mistake. I think it would be contrary to rule of law. And I think granting yet another amnesty would result in those numbers going even higher, would result in even more little girls and little boys being subjected to violence and horrific, dangerous conditions. And it would be a serious mistake for us to go down that road.

Thank you.

Senator BLUMENTHAL. Thank you, Senator Cruz.  
Senator Schumer.

Senator SCHUMER. Thank you, and thank you, Secretary Johnson. I am very glad you are there, and you are off to a great start. And I would not expect anything less from a New Yorker, although I heard Senator Menendez claims you are New Jerseyan. So I guess we will have to share your lineage, heritage, or whatever you call it.

I have a couple of quick questions—

Secretary JOHNSON. When I was at Paul Weiss, I paid taxes in both jurisdictions.

Senator SCHUMER. Ah, good. Good, or not so good. I do not know how we answer that one.

Anyway, earlier this year, due to backlogs at USCIS, it was taking about a year to process the I-130 applications. That is where U.S. citizens petition to bring their immediate relatives from foreign countries—spouses, parents, minor children. Earlier this year I sent you a letter on this issue, and you did a great job alleviating some of the backlog.

But I still have several cases in my office where our men and women in uniform have had to wait up to a year to be reunited with their relative. I think it is unfair that our veterans are getting caught in the backlog. They more than anyone else deserve to be reunited with loved ones and a support system as soon as possible.

So the backlogs at USCIS tend to increase and decrease depending on world events, but I think there should never be a time when veterans have to wait more than 6 months to reunited with their families.

Would you be willing to commit to creating a special process for making sure that the average processing time for I-130 veterans never takes longer than 6 months?

Secretary JOHNSON. Senator, I am aware of your interest in this issue. I do believe that we should do everything we can to make life easier for our veterans, those who have served in uniform, and I think we should be—I think we should pay attention to their situation.

Six months, I do not know whether that is feasible, but I do—I have—

Senator SCHUMER. Can you work toward making it happen if it is feasible?

Secretary JOHNSON. I have talked to my staff about this issue, and I agree that we should work to help military—

Senator SCHUMER. You do agree with the concept of expediting things for our veterans?

Secretary JOHNSON. Yes, sir.

Senator SCHUMER. Good. Okay. Thank you.

Next, a more parochial issue but one of great importance to the western portion of my State: the Buffalo Bills. They are an important—what do they have to do with you? You will find out in a minute. The Buffalo Bills are an important economic engine to the western New York community, but many of their fans are in Canada but do not come to games because of the traffic to travel to Buffalo through our ports of entry on game days. In other words, normal Sunday, not much traffic. But when there are Bills games, there is a huge amount of traffic, and yet the staffing levels at the

border do not take that into account, so we have huge backlogs. And then people stop coming because they miss the game.

So you have done a great job adding new agents to the ports of entry in western New York. We talked about it. You have acted on it. I thank you for that.

The question now is whether with these new agents and resources, can we make it easier for Canadians to attend Bills games on the eight Sundays of the year on which the games are in Buffalo? It would be a huge boost to western New York's economy. Specifically, can we do things like making sure we have premium staffing on the lanes on the Peace Bridge during the 3 hours before the game on game days, and having DHS create a setup at the stadium during the Bills games so fans can sign up and conduct NEXUS interviews so they can use the NEXUS lanes for future games, which would speed up things for everybody? The only way we know who is a Bills fan is who is at the games. So it is often hard to do these interviews because they are in remote locations. Bringing them to Bills games would make it easier for thousands of fans to get the cards.

And the next thing, finally, would you agree to meet with whomever the next owner is—we are looking for a new owner of the Bills. We are all working very hard, myself, the congressional delegation, the Governor, the county executive, the mayor, to make sure the Bills stay in Buffalo. And so we are going to have a new owner, and one of the things that would be helpful is if you would agree to meet with the next owner to develop a comprehensive plan to flow the speed of traffic over the border on game day.

Secretary JOHNSON. My answer concerning getting Bills fans to Bills games depends entirely on who they are playing.

[Laughter.]

Secretary JOHNSON. Just kidding.

Senator SCHUMER. They do not win that much. We wish they won more.

Secretary JOHNSON. Senator, I think you know that I have spent a lot of time working on expediting travel across the northern border: the Peace Bridge; I have been to Detroit; I have been to Port Huron looking at the backlog over the bridge in Candice Miller's district. And so I want to—I appreciate the importance of expediting travel across the few bridges we have on the northern border, and I want to help out the situation there.

Whether it is meeting the Bills owner or not, I mean, I would be happy to meet the Bills owner at some point. But I want to work with you on this. I would be happy to work on that.

Senator SCHUMER. Great. So would you look into these two things? I mean, aside from the meeting, premium staffing on game days—not all day it does not have to be but just for the hours before the game—and the possibility of having DHS do a NEXUS setup at the Bills stadium during game days.

Secretary JOHNSON. I will look into it to see whether it is feasible.

Senator SCHUMER. Great. Okay.

Secretary JOHNSON. As you know, we have limited numbers of people, and—

Senator SCHUMER. I do, but because of our increase in the budget and because you were good enough to put some of them on the Niagara frontier, we have more than we had before, which I think makes it possible to do these things. Okay. Thank you.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Schumer.

I have a number of questions for you, and then I think Senator Flake has a few questions, and that will probably end our hearing.

Secretary JOHNSON. Okay.

Senator BLUMENTHAL. And thank you for your patience and, most important, thank you for your service.

In March of this year—you may or may not recall—I wrote to you about the detention policies and practices of your agencies, and I expressed a number of concerns regarding the detention of literally hundreds of thousands of people. ICE broke a record in 2012 by detaining 477,000 people. That is about five times the number detained 20 years ago. And I know that you are hearing from both sides of this issue, and the contention that we heard this morning I think emphasizes the importance of passing immigration reform so that we can address many of these questions.

My concerns expressed in March essentially dealt with the excessive detention of long-time lawful permanent residents and asylum seekers who are kept in detention without any opportunity to appear before a judge or the Constitution requires bond hearings to protect detainees' rights, as you well know. So the lack of bond hearings for thousands of immigrants is a real concern for many of us, including myself.

So let me reiterate the question that I asked. Is there a way for the Department of Homeland Security to work with the Department of Justice to provide for immigration judge bond hearings to all individuals detained by the Department after no more than 6 months of detention, the time the U.S. Supreme Court has held is presumptively reasonable?

Secretary JOHNSON. Senator, I remember your letter. I hope I have responded to it by now. If I have not, I apologize.

Senator BLUMENTHAL. You responded to it, Mr. Secretary, but—or I should correct myself. You did not personally. The agency did in the person of Thomas Winkowski, Principal Deputy Assistant Secretary, who said, in effect—and I may not be doing full justice to the letter—that the issues raised in my letter, this was one of them, “require consultation with our partners at DOJ, including the Executive Office for Immigration Review.” That was back in mid-April.

Secretary JOHNSON. Okay. There is a case in the Ninth Circuit, *Rodriguez*, that was decided last year, and it is under review right now in DOJ and at DHS. We are considering whether to petition for cert in the case, and it directly implicates this issue.

There is a mandatory detention statute for certain categories of individuals, and my understanding of the *Rodriguez* case is that it says that after a 6-month period, there should be a bond hearing in certain circumstances. And so the case is under review right now. My general view is that we need to enforce statutes unless and until they are declared unconstitutional. But the case is under review right now. So it is something we are actively looking at.

Senator BLUMENTHAL. In my view, Mr. Secretary, you have that discretion right now. The statute does not require that you deny bond hearings. In fact, the better view of the policy here, I would suggest respectfully, as I did in my letter, is that you grant the bond hearings.

And let me also say that the other question raised in my letter is whether the definition of “custody” can be expanded to include alternatives to detention, alternatives that would prevent flight, where detainees are not in any way a risk to public safety.

So those are two proposals that I have advanced—not original to me—that would comply with the statute. It would not require a court decision. It would not implicate a necessity for you to wait for a court decision.

Secretary JOHNSON. I am aware of that question about the definition of “custody.” I recall that you asked that question, and I know it is under review right now. On this type of issue, I cannot do anything without lawyers.

Senator BLUMENTHAL. And I am not going to press you because I can sense from your response that you are—well, let me put it this way: I hope that you will get back to me about these issues in a timely way.

Let me ask you finally, I have heard from a great many Connecticut constituents who have mixed-status families; parts of their families are here legally, sometimes their children have been born here, sometimes they have children who were brought here as infants or very young children and have been granted DACA status. They live in fear of having parents or siblings or children deported.

I would like to ask you the question that has been asked in slightly different terms, maybe with a different viewpoint. Are you considering expanding DACA to include more young people who were brought here as children and who have deep ties to our communities but may not meet all of the present DACA requirements? I am thinking about young people who are pursuing their education who narrowly miss being eligible for DACA because they have passed their 31st birthday or because they had to leave the country at some point after 2007 due to extraordinary circumstances.

Secretary JOHNSON. The President asked me to undertake a review in March of our enforcement priorities. I am still undertaking that review. It has encompassed a number of things. I have not reached conclusions yet. As you know, I am sure, from public accounts, press accounts, he has asked me to wait to see what Congress does with comprehensive immigration reform before I report out the results of my review. But I am reviewing a number of different things, and I have not reached any firm conclusions at this time.

Senator BLUMENTHAL. I appreciate that answer, and I would just urge, having listened to and met and come to know many of the Connecticut young people who, unfortunately, are excluded from this deferred action status, who have lived here and studied in Connecticut, and whose lives are here, that you would expand the DACA status, the deferred action status, if the Congress fails to act. My hope is that Congress will act, in my view must.

Secretary JOHNSON. My hope is, too.

Senator BLUMENTHAL. And I know we share that view. But if it fails to do so, I would strongly urge that the deferred action status be expanded.

Senator Flake.

Senator FLAKE. Thank you, and I appreciate your indulgence, and yours, for answering just a couple of other areas on specific questions. But before I do that, you had mentioned, when we talked about motivations for people coming here, that you believe the primary motivation is the situation in these countries. I just have to say that that conflicts with an internal unreleased document that I believe you have a copy of now that has been cited by the media where interviews were done in the Rio Grande Valley by the sector intelligence analysts and others interviewing 230 family units that have come across. This was in May. May 28th of 2014 is when this report was released, and asking—the main purpose of it was, to quote the report, “to determine the factors compelling the OTMs to migrate to the United States, in addition to other migration issues.” And it says that of those 230, it said that the information—let us see: “A high percentage of the subjects interviewed stated their family members in the U.S. urged them to travel immediately because the U.S. Government was only issuing immigration permisos until the end of 2014.” Obviously it is bad information, but they believe that there is lax enforcement or some new program that needs to be addressed by this administration to let people know that that is not the case.

The issue of permisos was the main reason provided by 95 percent—95 percent—of the interviewed subjects. We want to talk about the primary reason. Ninety-five percent seems like more of a primary reason than the economic or security situation in their country. The second reason was related to increased gang-related violence in Central America. But, remember, 95 percent listed as the primary reason some expectation of a program that would allow them to stay.

And so I would again plead with the administration, the President needs to state unequivocally that those who come here will not be able to stay, that they will not qualify under DACA or under any other program, and any deportation policy review will not contemplate allowing them to stay. That would be, I would think, incredibly helpful. If you could relay that message back to the President, we are trying to do so as well.

But with regard to Arizona, you mentioned that people were being pulled off the line. I think in Arizona—I had staff down at the Nogales facility. They mentioned that as many as 200 officers, Border Patrol officers, were being utilized to process these families and these unaccompanied children. That obviously is going to pull people off the line.

What are we doing in terms of additional resources for Arizona in the Tucson Sector?

Secretary JOHNSON. I believe a number of things, Senator, including reassigning people from within the interior. I can get back to you with a more detailed breakdown of work allocations and so forth. You know, it is possible that a Border Patrol officer or agent could be involved in the processing of a migrant someplace near the border, even in regular circumstances. But no doubt this surge has

required that we reallocate, that we ask people to do things they do not normally do in addition to their normal responsibilities, and we are working to try to restore the equilibrium, because I agree with you that our border security personnel need to focus on border security. I am the first one to acknowledge that.

The document, everyone—a number of people here have referred to it. I have not seen it. I keep hearing about a draft document. I do not know how reliable this survey is. I am sure 5 minutes after I walk out of here, or 10 seconds after I walk out of here, somebody is going to put it in my hands and I will get to read it. I just do not know how reliable that survey is. I tend to agree with Senator Durbin that a 10-year-old or a 7-year-old child's principal motivation are the circumstances they are leaving, and they want to be with their mother and their father.

Senator FLAKE. Certainly. I do not think any of us deny that. But not many 10-year-olds and 7-year-olds are actually climbing on a bus or a train alone from Guatemala. It is usually kids older than that or smugglers taking them in.

Also, one other question. ICE is responsible to take a family unit, I guess, and put them at a bus stop. And I guess some of that was going on in Arizona. Is that happening anymore?

Secretary JOHNSON. My understanding is that, with regard to Nogales, the people that we are—the individuals we are now sending there are the UACs, the unaccompanied children, who under the law have to go to HHS. Whether it is possible that we need to send more family units to Nogales for processing, I would not say and I cannot rule that out. But my understanding is that since about June 1st we have been sending principally, if not exclusively, the unaccompanied children to Nogales for processing.

Senator FLAKE. When ICE takes a family unit to a bus stop and drops them off there with an order to appear at some place and time, what care is being taken to ensure that is actually a family unit? We hear anecdotal evidence that some 16-year-old will say, "Well, I belong to that family," and they get to the bus stop and say, "See you later."

Is ICE required to do some kind of due diligence to make sure that that actually is—

Secretary JOHNSON. I am sure there is some type of protocol in place to ensure that a group of people who claim to be a family unit are, in fact, a family unit. But I, sitting here, do not know what that is.

Senator FLAKE. All right. Thank you. And thanks for your indulgence again. I appreciate it.

Senator BLUMENTHAL. Thank you, Mr. Secretary. I am going to close this hearing. The record will be kept open for 1 week. We thank you very much for your service and for your very helpful and forthright testimony today.

Thank you.

[Whereupon, at 12:49 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]



# **A P P E N D I X**

## **ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD**

Witness List

Hearing before the  
Senate Committee on the Judiciary

On

“Oversight of the Department of Homeland Security”

Wednesday, June 11, 2014  
Dirksen Senate Office Building, Room 226  
10:00 a.m.

The Honorable Jeh Johnson  
Secretary  
United States Department of Homeland Security  
Washington, DC



**Statement of Jeh Charles Johnson, Secretary  
United States Department of Homeland Security**

**before the**

**United States Senate**

**Committee on the Judiciary**

**June 11, 2014**

Chairman Leahy, Ranking Member Grassley, and Members of this Committee, thank you for the opportunity to testify today.

The cornerstone of our mission at the Department of Homeland Security (DHS) has been, and should continue to be, counterterrorism – that is, protecting the nation against terrorist attacks. As a New Yorker who was present in Manhattan on 9/11, it is what most motivates my public service. We must remain vigilant in detecting and preventing future terrorist threats that may seek to penetrate the homeland from the land, sea or air.

While many of the leaders of core al-Qaeda (as we knew it after 9/11) are dead or captured, the terrorist threat has evolved, and still persists. Since about 2009, we have seen the rise of al-Qaeda affiliates, such as al-Qaeda in the Arabian Peninsula. AQAP, in particular, has made repeated efforts to export terrorism to our homeland, and it remains active.

We also face threats from those who self-radicalize to violence, the so-called “lone wolf,” domestic-based, who did not train at an al-Qaeda camp overseas or become part of an enemy force, but who may be inspired by radical, violent ideology to do harm to Americans – illustrated last year by the Boston Marathon bombing. This is the type of threat that may be hardest to detect. It involves independent actors potentially living in the United States, with easy access to items that, in the wrong hands, can become tools for mass violence.

To counter the potential for violent extremism at home, I am committed to seeing DHS continue to build strong relationships with state and local law enforcement throughout the country. We continue to provide training to law enforcement, community and private sector partners to counter violent extremism and active shooter threats. We have studied and shared information with these partners regarding violent extremism, including the factors that may influence extremist activities as well as potential indicators. We also continue to encourage public participation in our efforts through campaigns such as “If You See Something, Say Something,” which promotes the reporting of suspicious activity to the authorities.

Homeland security depends on security along our borders and at ports of entry. At our borders and ports of entry, we must deny entry to terrorists, drug traffickers, human traffickers, transnational criminal organizations, and other threats to national security and public safety while continuing to facilitate legal travel and trade.

We appreciate the support Congress has provided to improve security at our borders and ports of entry. With that support, we have made great progress. There are now increased personnel, technology, and infrastructure on our borders, more than ever before, and our men and women in and around the border are producing results.

That said, we must remain vigilant in response to the latest trends and challenges to border security. We are concerned and closely monitoring a substantial increase in the numbers of unaccompanied children, who are some of the most vulnerable individuals who interact with our immigration system. We are working closely with the Department of Health and Human

Services (HHS), to whom DHS is mandated by law to transfer custody of these children once they are identified as unaccompanied alien children.

I have been closely following this emerging issue since coming into office, with a particular focus on the Rio Grande Valley. On Sunday, May 11th, I traveled to McAllen, Texas to view the situation and saw the children there first hand – an overwhelming number of whom were under twelve years old. I have taken steps across the Department and in coordination with federal partners to immediately address this issue. These efforts build on several years of increased and strengthened coordination.

On June 2, President Obama directed me to establish an interagency Unified Coordination Group to ensure Federal unity of effort in responding to the influx of unaccompanied children across the Southwest border. In order to achieve the unity of effort required to respond to this situation, I have designated Federal Emergency Management Agency (FEMA) Administrator Craig Fugate as the Federal Coordinating Official to lead and coordinate the Unified Coordination Group across the Executive Branch. In this role, Administrator Fugate will, subject to my oversight, direction and guidance, lead and coordinate Federal response efforts to ensure that Federal agencies are unified in providing relief to the affected children. U.S. Customs and Border Protection (CBP) will maintain primary responsibility for border security operations at and between ports of entry and, working with U.S. Immigration and Customs Enforcement (ICE), provide for the proper care of unaccompanied children when they are temporarily in DHS custody. DHS will continue to coordinate closely with HHS, the Departments of State and Defense, the General Services Administration and other agencies, to ensure a coordinated and rapid government-wide response in the short-term and to undertake broader, longer-term reforms to address the root cause behind these recent migration trends. We will also continue to work closely with the governments of Mexico, Guatemala, Honduras, and El Salvador. We must, and we will, address this situation.

Since taking office, I also have been focused on the issue of use of force by our agents and officers in the field. In my view, transparency is essential to the credibility of a law enforcement agency within the communities it operates. In March, both CBP and ICE delivered on a commitment I made in January and publicly released their existing use-of-force policies. The Department also publicly released, for the first time, the Department-wide use-of-force policy. More recently, on May 30, CBP released a report conducted by an external entity – the Police Executive Research Forum (PERF) – and a revised use of force handbook which incorporates most of the recommendations found by the PERF report as well as reviews conducted by CBP and the DHS Office of Inspector General. The revised handbook provides further guidance to the Border Patrol workforce to lessen the likelihood of incidents involving deadly force. The revised handbook has received support from both CBP personnel and border communities; however, we understand that effective implementation will be critical.

As we work to increase border security, however, we must continue to look beyond our borders. We are actively engaging our international partners to identify and interdict threats at the earliest possible point, before they reach our borders. We are sharing more information with these partners; we are working in a joint capacity to counter transnational criminal organizations,

human and drug smugglers, and those who traffic in persons; and we are building greater security and integrity into our shared systems of trade and travel.

We can't sit along our land and maritime borders and play "goal line defense"—we must, where possible and appropriate, engage with our foreign and interagency partners to extend our homeland security beyond our borders and address threats as far from the homeland as possible. This is why I believe pre-clearance by CBP in foreign airports before passengers board a flight bound for the U.S., is a homeland security imperative. There are currently 16 foreign airports with last points of departure in the United States with preclearance operations, including most recently, Abu Dhabi. I have sent a team of DHS officials to Europe last month to engage with our partners there to establish this capability at more overseas airports that are last points of departure to the United States. And just last week I was in the Middle East meeting with foreign leaders, airline executives, and members of the International Air Transport Association (IATA) to personally deliver this message.

Within the last several months we have issued advisories to airlines about evolving threats to aviation security and modified the Transportation Security Administration's (TSA) screening procedures at last-point-of-departure international airports. TSA issues these advisories whenever necessary, based on the latest intelligence and information. We are, and have been, vigilant in checking the INTERPOL database for passports reported lost or stolen, to prevent someone with a passport that is not his or her own from boarding a flight to or from the United States.

Any international airport that has a direct flight to the United States must abide by strict U.S. security measures, which include appropriate verification of all travel documents. Since 2008, prior to departure, CBP vets all travelers for inbound and outbound flights to and from the United States, as well as any flight that travels through U.S. airspace, through the Advanced Passenger Information System and against INTERPOL databases, and does a thorough review of all relevant domestic and international criminal databases, for any issues of concern, including reports of stolen documents.

I have directed the development of a Southern Border and Approaches Campaign Planning effort that is putting together a strategic framework to further enhance security of our Southern border. Plan development will be guided by specific outcomes and quantifiable targets for border security, approved by me, and will address improved information sharing, continued enhancement and integration of sensors, and unified command and control structures as appropriate. The overall planning effort will also include a subset of campaign plans focused on addressing challenges within specific geographic areas.

Immigration enforcement is also critical to homeland security. ICE continues to focus on sensible, effective immigration enforcement that prioritizes the removal of national security and public safety threats, and those apprehended at the border while attempting to unlawfully enter the United States.

As I'm sure you know, on March 13 of this year, the White House shared that President Obama directed me to review our deportation policies, to see if removals can be conducted in a more

humane manner. To accomplish this, I have sought advice and input from my team within DHS, including the very people that enforce our immigration laws on a daily basis. As I continue my review, I welcome the ideas of various stakeholders and Members of Congress from both sides of the aisle who bring to the discussion a diverse set of views. This review is ongoing.

Whatever we do to revise our enforcement policies, however, is no substitute for comprehensive immigration reform passed by Congress. A year ago on June 27, the Senate passed a reform bill that would increase our border and port security, more effectively discourage employers from hiring undocumented workers, better enable employers to hire documented workers to meet labor needs, remove obstacles to family reunification, improve our ability to attract and retain highly-skilled immigrants by creating additional avenues for entrepreneurs and foreign students who graduate with advanced STEM degrees, and provide an earned path to citizenship for the estimated 11.4 million undocumented immigrants in this country, many of whom have been here for years.

This bill passed the Senate by a bipartisan vote of 68-32, is supported by President Obama, Democrats and Republicans, the business and labor communities, law enforcement and religious leaders, and, according to polls, the majority of the American people. The House must now act to fix our broken system.

The estimated 11.4 million undocumented immigrants living in this country are not going away. They are not going to “self-deport.” As a matter of homeland security, we should encourage these people to come out of the shadows of American society, pay taxes and fines, be held accountable, and be given the opportunity to get on a path to citizenship like others. What we are talking about is not amnesty, or rewarding people for breaking the law; it is an opportunity to actually get right with the law and get in line behind others. It is far preferable to what we have now.

Meanwhile, I am committed to enforcing our immigration laws in manner that best promotes and ensures national security, public safety and border security. I am aware of the reports that in Fiscal Year 2013 thousands of individuals with criminal convictions who may be removable were released from custody. I have asked for a deeper understanding of this issue. Many of these releases were directed by immigration judges or pursuant to legal requirements, and/or with conditions of supervision intended to ensure their monitoring and appearance in immigration proceedings. Nevertheless, I intend to work with ICE leadership to determine whether we are doing everything we can to maximize public safety.

Finally, I am committed to addressing the various management issues facing the Department of Homeland Security.

For example, as part of a broader Unity of Effort initiative I have directed, we will ensure that the Department continues to invest and operate in a cohesive, unified fashion, and makes decisions that build true unity of effort across our components. This initiative will allow us to continue to build DHS into an organization that is greater than the sum of its parts – one that operates more collaboratively, is able to leverage shared strengths and take advantage of shared efficiencies, and is a more effective partner at every level.

With the White House and Congress, we are focused on filling the vacancies that exist at the senior levels of the Department. I am pleased that, since December, the Senate has confirmed seven new leaders for DHS, including myself. We are continuing to recruit and vet terrific candidates to fill the remaining vacancies, and I hope the Senate will act quickly to confirm our nominees, including Leon Rodriguez to lead U.S. Citizenship and Immigration Services.

Morale has been low within various components of the Department. Morale depends in very large measure on good leadership, and by filling the senior level vacancies, I believe we will inject a new energy into the Department. Deputy Secretary Mayorkas and I also have formed a Steering Committee to identify issues impacting morale and develop discrete plans to address those issues, including the hiring and promotion process, training and professional development, rewards and recognition for employees, performance management, and employee communications. In May, I presided at the first of our Secretary's "Act of Valor" awards programs, to acknowledge DHS personnel who commit acts of valor on or off duty.

I believe homeland security is the most important mission any government can provide to its people. In the pursuit of this important mission, I pledge to this Committee my total dedication and all the energy I possess. Thank you for listening and I look forward to your questions.

**Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On Oversight Of The Department of Homeland Security  
June 11, 2014**

I welcome Jeh Johnson today to the Judiciary Committee for his first oversight hearing as the Secretary of the Department of Homeland Security. For the past seven months, he has led an agency that plays a vital role in protecting our national security, providing disaster relief, and ensuring cybersecurity. The Department of Homeland Security also has primary responsibility for implementing and enforcing our Nation's immigration laws – a system that Secretary Johnson himself acknowledges is broken.

One year ago, this Committee came together after weeks of exhaustive deliberations to pass bipartisan legislation to fix that broken immigration system. That bill, which ultimately passed the Senate, will unite families, spur the economy, and help protect our borders. We knew last year that the cost of inaction was too great, and members of this Committee and the full Senate passed historic legislation that would create a system worthy of our American values.

House Republicans refuse to act. Last year, Senators reached across the aisle and worked together on meaningful and comprehensive legislation, but all we have seen from House Republicans so far are shifting principles and repeated postponements. This has not helped their party nor has it helped our country. Every day the House fails to act is another day that families are torn apart and our economy lags. Every day the House fails to act, we realize the human cost of doing nothing to fix our broken immigration system.

We see the human cost in the gripping photographs of young children, seeking a better life, housed in facilities at the border. The pictures are shocking, and so are the numbers. In 2011, 6,560 unaccompanied children crossed the border. Those numbers have now skyrocketed. Just in the last seven months, nearly 50,000 children have already been apprehended and that number will likely double before the end of 2014. President Obama has called this an "urgent humanitarian situation." I agree. I commend Secretary Johnson for coordinating with relevant agencies to address this dire situation. Yet, reports indicate that the flow is overwhelming the agencies responsible for these children. The Senate-passed immigration bill would help address this issue and the House should take it up without further delay.

In addition to these children, I am deeply concerned with the conditions and treatment of other immigrant detainees, especially those who are sexually assaulted while they are in custody. When Congress passed the Leahy-Crapo Violence Against Women Reauthorization Act last year, it included a provision designed to prevent sexual violence in DHS facilities. I thank the Department for recently issuing compliance regulations, and I look forward to hearing about the changes underway to protect against abuse.

I am troubled by reports of border patrol agents resorting to the use of deadly force. Since 2010, agents who were assaulted with rocks have responded with deadly force 43 times, resulting in 10 deaths. Among those killed was Jose Rodriguez, a 16-year-old boy who was shot multiple times, including in the back of the head. Twenty months later, the investigation into this boy's death is

still without resolution. The Border Patrol's recent release of its use-of-force policy handbook and directive on how personnel should respond to threats is a positive step but we still need more transparency in these types of cases and more timely resolution so that the families involved can have closure and officers can receive better training.

In addition to this human cost of our broken immigration system, there is a powerful economic cost. I have long championed the EB-5 Regional Center Program because of its job creation potential in Vermont and in other states, with no cost to American taxpayers. But absent Congressional action to make this jobs program permanent, the program's potential is limited. I am concerned that visa processing delays are threatening to undermine economic development where it is needed most. This uncertainty could slow down the program's growth and deter investors, so I urge the Department to focus on timely consideration of EB-5 applications which directly lead to job creation and economic growth throughout our country.

The status quo is not an option. It is not sustainable for our families, for our economy or for our national security. The humanitarian crisis we now face is just the latest reminder of why House Republicans must act, as we did in the Senate a year ago, to fix our broken immigration system. We have waited too long, but there is still a window of time for Republicans to join us in this important effort.

I look forward to discussing these issues with Secretary Johnson today. And I appreciate the hard working men and women of DHS who serve tirelessly every day to keep Americans safe.

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QUESTIONS SUBMITTED TO HON. JEH JOHNSON BY SENATOR LEAHY

**QUESTIONS FOR THE RECORD – Chairman Leahy**  
**6/11/14 DHS Oversight Hearing**

**VAWA and the Prison Rape Elimination Act (PREA)**

In 2003, Congress unanimously passed the Prison Rape Elimination Act (PREA) which requires prisons, jails, and juvenile facilities across the country to enact policies designed to prevent sexual assault. The 2013 Leahy-Crapo VAWA reauthorization extended these requirements to all immigration detention facilities under the authority of the Department of Homeland Security.

- Q. Can you talk about what new standards the Department has implemented to ensure the detection, prevention, and punishment of rape and sexual assault in DHS facilities?**
- Q. Can you also comment on reports that ICE policy does not prohibit housing individuals in immigration detention with criminals who have already been convicted and are serving time? There was a recent case in Minnesota where an 18-year-old held by immigration authorities was assaulted by his cell mate, a registered sex offender serving a federal sentence. Does DHS have plans to change this policy?**

**Trafficking**

The Trafficking Victims Protection Act (TVPA), originally passed in 2000, created two new visa categories to help victims of crime by allowing them to remain in the United States to assist law enforcement. The U visa ensures that victims of domestic violence or sexual assault will not be deported before they can participate in holding their abusers accountable. The T visa assists trafficking victims who were brought to the United States for labor or sexual exploitation. I was proud to lead the reauthorization of the TVPA last year and expand eligibility in both of these categories. I know that you share my belief that victims must feel free to come forward and seek justice regardless of their immigration status.

- Q. Can you tell this Committee how many T visas and U visas have been granted since their creation in 2000? What efforts in the Department undertaking to assist victims of abuse, including trafficking?**
- Q. Just last month you said you were “surprised” to learn that courthouses were not on the list of “sensitive locations,” like schools, hospitals and houses of worship where immigration officers may not carry out immigration enforcement actions except in exigent circumstances.

**What actions are you taking to change this policy to ensure that victims will feel safe in coming forward to seek the protection of our justice system?**

**Preclearance of Passengers Coming from Canada**

I understand the Department is working to station more U.S. officials in Canada to prescreen passengers before they arrive at the Canadian border. These preclearance operations help to expedite legitimate trade and tourism with Canada – which is Vermont's largest trading partner – while also saving money and enhancing security. I am working with the Department on how we can help pave the way for expanded preclearance operations in Canada, and look forward to our ongoing collaboration on this issue.

**Q. From your perspective, what are the greatest benefits of expanding U.S. preclearance operations in Canada?**

#### **Border Searches of Electronic Devices**

The Department Homeland Security maintains it has the authority to conduct suspicion-less searches of Americans' phones, tablets and laptops when they cross the border into the country, based on the "border search" exception to the Fourth Amendment. But these electronic devices that we all carry around with us contain enormous amounts of very personal information about our everyday lives. This is a very real concern for Vermonters who cross regularly into Canada to visit friends and family.

**Q. What is DHS doing to limit the use of these warrantless, but extremely intrusive, searches?**

#### **I-130 Application Backlog**

Stand-alone immigration applications for the immediate relatives of United States citizens, called "I-130 applications," have been seriously backlogged, causing very long waits. I understand that USCIS needed to prioritize processing the DACA applications.

**Q. What is the Department's plan to alleviate the backlog for these other highly deserving applications where the immediate relatives of U.S. citizens sometimes have to wait almost a year to receive an adjudication of their petitions?**

**Q. What changes to the process is the Department considering to ensure that the backlog does not increase again once it is eliminated?**

#### **Legal Representation for Unaccompanied Alien Children (UAC)**

Once detained, unaccompanied minors are placed into removal proceedings and many have no legal representation. The Senate's comprehensive immigration reform bill would give the Attorney General authority to grant unaccompanied children a lawyer to ensure that these young people get relief if they are so entitled.

I applaud the efforts of Judge Katzmann, the chief judge of the Second Circuit who has worked hard to secure private funding to hire lawyers for immigrants in need. And I know the Administration has made efforts to expand AmeriCorps to meet this growing need. But we need a permanent solution that does not rely on private donations or the preferences of a particular administration.

**Q. Do you agree that providing young children with legal assistance streamlines the process for judges who are better able to identify meritorious claims and make informed decisions? How has representation for immigrants been shown to impact the efficiency and capacity of immigration proceedings? Do you believe legislative reform is necessary to address this issue?**

**Haji Gulalai**

Earlier this year, the *Washington Post* revealed that a former senior official of Afghanistan's National Directorate of Security (NDS) had secretly relocated to the United States several years ago. According to the article, Haji Gulalai was able to obtain asylum despite being responsible for administering and overseeing abhorrent acts of cruelty and torture against prisoners detained at NDS facilities. Reports by the United Nations have also documented systemic mistreatment and torture of prisoners by the NDS throughout Afghanistan during Mr. Gulalai's tenure as head of the detention and interrogation division.

These allegations are deeply alarming and raise troubling questions about how Mr. Gulalai was permitted to enter the United States and receive asylum. It would be particularly disturbing if Mr. Gulalai received preferential treatment, given that thousands of Afghan nationals have been denied special immigrant visas to enter the United States despite risking their lives to work in support of U.S. military efforts.

**Q: Please provide a detailed account of how Mr. Gulalai entered the United States; including when and how his family was permitted to enter the country.**

**Q: Was the Department of Homeland Security aware of the allegations against Mr. Gulalai when he was admitted to the United States?**

**Q: What is Mr. Gulalai's current immigration status?**

**Questions for the Record from Senator Charles E. Grassley  
for Secretary of Homeland Security Jeh Johnson  
U.S. Senate Committee on the Judiciary  
Hearing on "Oversight of the Department of Homeland Security"  
Submitted on June 18, 2014**

**(1) Deferred Action for Childhood Arrivals**

On June 5, 2014, the Department announced the process for individuals to renew their status or initially apply under the Deferred Action for Childhood Arrivals (DACA) program. The documents published by the Department, specifically the Frequently Asked Questions (FAQ), prove that the agency is loosening the education requirements and is not routinely verifying documentation provided by applicants.

- A. What is the agency doing to prevent fraud and abuse by applicants who may use a diploma mill to substantiate their education?
- B. How many DACA applications have been denied or terminated because of evidence that contradicts an applicant's education background?
- C. Why doesn't the Department routinely verify data or evidence provided by applicants but instead tell applicants that they *may* do it (see FAQ21)?
- D. Please provide the definition of an "alternative" education program, as stated in FAQ33, and why this was included?
- E. Please explain how adjudicators will assess whether an education program, including literacy or English as a Second Language program, will be assessed as "effective"?
- F. Please provide any guidance that adjudicators are receiving about the education requirements.
- G. Are there discussions taking place within the Department or within the White House to expand the DACA program? If so, how?

**(2) Release of Criminal Aliens**

In 2013, U.S. Immigration and Customs Enforcement (ICE) released from its custody 36,007 individuals who had been convicted of a crime and were awaiting the outcome of deportation proceedings.<sup>1</sup> According to ICE, "In some of the releases . . . , ICE was required by law to release the individuals from custody, pursuant to decisions by the Supreme Court and other courts."<sup>2</sup> However, it appears that the vast majority of the 36,007 releases were not so required.<sup>3</sup> In fact, "Only a small share of these criminal aliens (fewer than 3,000) were released in accordance with a 2001 Supreme Court decision, *Zadvydas v. Davis*."<sup>4</sup>

<sup>1</sup> Jessica Vaughn, "ICE Document Details 36,000 Criminal Alien Releases in 2013," *Center for Immigration Studies*, May 2014, <http://cis.org/ICE-Documents-Details-36000-Criminal-Aliens-Release-in-2013>.

<sup>2</sup> Caroline May, "Ice responds to release of 36,007 criminal aliens," *Breitbart News Network*, May 13, 2014, <http://www.breitbart.com/Big-Government/2014/05/13/ICE-responds-to-release-of-36-007-criminal-aliens>.

<sup>3</sup> See "ICE Document Details 36,000 Criminal Alien Releases in 2013," *supra*.

<sup>4</sup> *Id.*

The *Zadvydas* decision prohibits the indefinite detention of aliens who have been ordered removed from the U.S.<sup>5</sup> Specifically, the *Zadvydas* Court held that once an alien has been ordered removed, detaining that alien beyond six months is presumptively unreasonable.<sup>6</sup> Significantly, the Court held that this presumption can be rebutted if a “significant likelihood of removal in the reasonably foreseeable future” can be shown.<sup>7</sup>

Of the 36,007 individuals released from ICE custody in 2013, 116 individuals had been convicted of a total of 193 homicides.<sup>8</sup> On May 12, 2014, ICE reportedly claimed that court decisions and orders accounted for the release of individuals convicted of 75% percent of these homicides.<sup>9</sup> Two days later, ICE revised that figure to 72%.<sup>10</sup> So, by its own admission, ICE *voluntarily* released convicted criminals who accounted for the remaining 28% even though it had the discretion to detain them and keep them off the streets.

Such a serious breach of public safety requires accountability and answers for the American people.

- A. For each homicide convict whose release in 2013 was “mandatory,” please provide the name of the judge and court of jurisdiction that ordered the release.
- B. If there was no court order, please explain how the release can properly be called “mandatory” rather than discretionary.
- C. If your answers to Question (A) or (B) relies on the 6-month rule announced by the *Zadvydas* Court, please explain how each release can be called “mandatory” in light of the following language from the *Zadvydas* decision:

After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing . . . . *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months.* To the contrary, an alien may be held in confinement until it has been determined that

<sup>5</sup> *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001).

<sup>6</sup> *Id.* at 699-701.

<sup>7</sup> *Id.* at 701.

<sup>8</sup> Stephen Dinan, “Feds released hundreds of immigrant murderers, drunk drivers, sex-crimes convicts,” *The Washington Times*, May 12, 2014, <http://www.washingtontimes.com/news/2014/may/12/feds-released-hundreds-immigrant-murderers-drunken/?page=all>; see also “ICE Document Details 36,000 Criminal Alien Releases in 2013,” *supra*.

<sup>9</sup> Caroline May, “ICE edits statement to release of 36,007 criminal immigrants,” *Breitbart News Network*, May 15, 2014, <http://www.breitbart.com/Big-Government/2014/05/15/ICE-Updates-Response-TO-Release-Of-36-007-Criminal-Immigrants>.

<sup>10</sup> *Id.*

there is no significant likelihood of removal in the reasonably foreseeable future.<sup>11</sup>

Specifically, for *each* homicide convict whose release in 2013 was “mandatory”:

1. Please explain in detail the steps ICE took to rebut the 6-month presumption prior to the “mandatory” release. If no steps were taken, please explain why not.
  2. Please explain the basis for ICE’s ultimate determination that there was no significant likelihood of removal in the reasonably foreseeable future.
  3. Please indicate whether DHS asked the State Department to leverage its visa sanction authority against the country which refused to take back the alien in question. If not, please explain why not.
- D. For each discretionary release, please explain why the convicted criminal alien in question was released.
- E. For each homicide convict released, please indicate what conditions were imposed upon the release in order to protect public safety. If none, then please explain why precautionary conditions were not imposed.
- F. For each homicide convict released, please provide
1. the immigration status of the convict;
  2. the zip code of the convict’s last known address; and
  3. the name and location of the detention facility from which the convict was released.

### **(3) Zadvydas Decision**

During the hearing, we discussed the 2001 U.S. Supreme Court decision in *Zadvydas v. Davis*. I asked if you would support legislation that narrows the impact of that decision and allows the government to hold criminal aliens longer than six months. You said, “Senator, it’s my understanding that the case concerns a construction of the Constitution so I don’t know whether a legislative fix is appropriate, but I think looking at legislation is worthwhile. When I read the case I was struck by the fact that there might be room for greater space in the exception for detaining people who are true threats to public safety. So, I’m interested in having our lawyers be sure we’re interpreting it properly and I’d be willing to think about legislation.”

We also discussed whether you had any plans to recommend to Secretary of State John Kerry to deny visas to those countries that refuse to cooperate and have not accepted their citizens back. In the case of Guayana, following the denial of visas, they accepted 115 out of the 116 citizens

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<sup>11</sup> 533 U.S. 678, at 701 (emphasis added).

that the United States wanted to deport. This is clearly an effective tool that is not being utilized by the administration.

- A. Please provide me with an update of the Department's review of legislative options to the fix *Zadvydas* decision.
- B. Please provide me with an update of the Department's review of their interpretation of the *Zadvydas* decision, especially in regards to the possibility of detaining those aliens who are 'true threats to public safety' longer than six months.
- C. In the hearing, you stated that you were discussing with your staff whether denying visas to recalcitrant countries is a tool that should be utilized more often. Please notify me in writing when you and your staff reach a decision on this matter.
- D. Please also provide me with data and the reasons why these recalcitrant countries won't take their citizens back.

**(4) Reduction in Detention Beds**

The law currently requires ICE to maintain 34,000 detention beds daily. The President's budget called for a reduction in detention beds, asking for only enough to detain 30,500 on a daily basis. In light of the outrageous situation in which 36,000 criminal aliens have been released, do you agree with the President's budget request to reduce the funding for detention beds? Please explain the rationale if you agree with the budget request to reduce detention bed space.

**(5) EB-5 Immigrant Investor Program**

I have been told, and internal reports suggest, that the EB-5 visa program is being used to facilitate terrorist travel, economic espionage, money laundering, and investment fraud. The Inspector General said that the program cannot be managed effectively, and that there is some question about the economic benefit it provides.

- A. In 2012, the Department's Office of Intelligence and Analysis completed a classified analysis of the EB-5 Immigrant Investor Program. On November 1, 2014, Senator Coburn and I asked for this report. When will you give us access to it?
- B. Has DHS ever conducted any sample file reviews or in-depth audits to estimate the fraud level in the EB-5 program—for example, through a Benefits Fraud & Compliance Assessment? If so, what were the results? If not, why not?
- C. What percentage of I-924 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?

- D. What percentage of I-526 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?
- E. What percentage of I-829 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?
- F. I understand the USCIS director occasionally receives updates on the number of pending security concerns for *all cases* (not just EB-5). For each quarter from the beginning of 2011 through the present, please list the number of pending security concerns under examination, the number that were newly received in that quarter, and the number that remained after security concerns were closed through the quarter.

**(6) Benefits Fraud and Compliance Assessments**

The Fraud Detection and National Security, under direction of U.S. Citizenship and Immigration Services, has conducted Benefits Fraud and Compliance Assessments in the past. Please provide a list of programs that have been the subject of such an assessment. Are there other programs slated to be assessed by FDNS? If so, please describe their projected workload and completion dates. If not, why not?

**(7) Hands Off List**

On February 3, 2014, I wrote you asking about some internal DHS emails I received which raised some disturbing questions about DHS policies regarding admitting individuals with potential ties to terrorism into the United States. The May 2012 email chain between ICE personnel stated: "The NTC Watch Commander advised that the subject has sued CBP twice in the past and that he's one of the several hands off passengers nationwide. . . . Apparently his records were removed in December 2010 and the DHS Secretary was involved in the matter." I have previously disclosed the identity of the individual in question to the Department.

- A. What is the current watchlist status of this individual?
- B. Why was this individual removed from the watchlist in December 2010?
- C. Was Secretary Napolitano involved in the matter? If so, please describe the nature, extent, and reasons for the involvement of the DHS Secretary or her staff in the removal of the individual from the watchlist.
- D. What role would the Secretary typically play in removing someone from the terrorist watchlist?
- E. I understand that on June 7, 2010, CBP issued a memo stating that "CBP personnel are not permitted to independently create terrorist related lookouts for known or suspected terrorists in any CBP screening database. Additionally the remarks section of any TECS lookout (MS92 record) created by CBP personnel may not include references to terrorism or extremism." Was the removal of this individual's information connected in any way with the issues discussed in this CBP memo?

- F. What prompted the need to “reemphasize and expand” this policy in June 2010 with the issuance of this memo?
- G. I understand that the June 2010 memo was preceded by a 2007 CBP memo. Please provide a copy of this memo.
- H. If a CBP officer obtains valuable information regarding extremist ties but does not have enough information to make a nomination to the Terrorist Screening Center, why would CBP object to that information being included in the remarks section of a TECS lookout?
- I. What is CBP’s statutory authority for giving such guidance?
- J. Does CBP have regulations that address this issue? If so, what are they, and what is the authority for issuing the regulations? If not, why not?
- K. How many terrorist-related lookouts for known or suspected terrorists were removed from any CBP screening database as a result of the June 2010 CBP memo?
- L. How many terrorist-related lookouts for known or suspected terrorists were removed from any CBP screening database as a result of the 2007 CBP memo?

**(8) Interviews of Individuals at the Border**

During the hearing, many members discussed an internal summary prepared by agents in the field concerning the recent surge of unaccompanied children. The document, while it does not have any author or official seal, was apparently done to summarize interviews of individuals crossing the border along the McAllen, Rio Grande City and Weslaco stations. Interviews were done by intelligence analysts and border patrol agents. The main task, it says, was “to determine the factors compelling the OTMs (other than Mexicans) to migrate to the U.S.” 230 subjects were interviewed from several countries.

When asked why they chose this time to migrate, an overwhelming majority said it was to take advantage of the “new” U.S. law that grants a “free pass” to unaccompanied children and female adults traveling with minors. These “free passes” refer to a *Notice To Appear* document, saying they are issued and then released on their own recognizance pending a hearing. Specifically, it states, “A high percentage of the subjects interviewed stated their family members in the U.S. urged them to travel immediately, because the United States Government was only issuing immigration “free passes” until the end of June 2014.” The document states that “the issue of permisos” was the main reason provided by 95% (+/-) of the interviewed subjects.

- A. Are agents in the field instructed to do such interviews?
- B. If so, do they report to headquarters?
- C. Please provide any memos or summaries of these interviews to the committee.

**(9) Martinez v. Holder**

Petitioner Martinez, a former MS-13 gang member from El Salvador, argued during removal proceedings that based on the threat to his life at the hands of that gang, he should be eligible for what is known as “withholding of removal” pursuant to 8 U.S.C. § 1231(b)(3). The Fourth Circuit’s decision in *Holder v. Martinez* suggests that his status as a former gang member might be a “protected ground” entitling him to remain in the country instead of being removed. As a result of this decision, even members of the most violent and dangerous gangs may simply renounce their membership as a ruse to remain here.

- A. Do you believe that individuals who are former gang members should be entitled to withholding of removal due to those ties, as *Holder v. Martinez* allows?
- B. If not, what do you believe should be done about this decision? Did you urge that it should be appealed? Would you support any action to overturn it, including legislation if necessary?

**(10) DHS Drone Operations**

U.S. Customs and Border Protection (CBP) employs a fleet of ten modified Predator B unmanned aerial vehicles (UAVs), and has ordered another fourteen, to augment its capabilities to patrol America’s borders.

- A. Does DHS have any plan or intention to arm its drones with any type of weapons, even non-lethal ones? Do you believe DHS has the authority to do so?

According to one media report, DHS has lent the use of its drones to other federal, state and local law enforcement agencies nearly 700 times in three years. In one reported instance, DHS provided the use of a drone to a local sheriff to investigate the conduct of a farmer in North Dakota who had allegedly stole his neighbor’s cattle and engaged in an armed standoff with police.

- B. Does DHS have any formal guidelines or regulations that limit the use of its drones to situations where there is a specific federal interest? If not, do you think it should?

The Department of Justice Inspector General recently recommended that the FBI develop privacy guidelines for its use of drones, given the unique Fourth Amendment concerns they present.

- C. Especially since DHS’s drones are apparently being used in the interior of the country, and not merely to patrol the border, do you think DHS should also develop privacy guidelines for its drones?

**(11) Material Support to Terrorists**

On February 5, 2014, you used your discretion to exempt a category of activities deemed to be material support to undesignated terrorist organizations or to individual terrorists. It is concerning for several reasons.

- First, the three elements that form the basis of the exemption are extremely broad, including “certain routine commercial transactions”, “certain routine humanitarian assistance” or “substantial pressure that does not rise to the level of duress” with no definitions as to what the exemption will encompass.
- Second, since “undesignated terrorist organizations” include terrorist organizations prior to the date they are designated, applying the broad categories of material support may include exempting support to a group recently designated, such as Al-Nusra Front in Syria or providing support to al-Qa’ida in Iraq prior to its designation date.
- Third, from a national security and counterterrorism policy perspective, what is the rationale for the United States to allow more individuals whom admittedly provided material support to a group that would qualify as an undesignated terrorist organization or an individual terrorist into the United States.

In your prepared statement, you said that the “cornerstone of our mission at the Department has been, and should continue to be, counterterrorism—that is, protecting the nation against terrorist attacks. Without a doubt, these threats come from individuals seeking admission to our country.

At least two individuals associated with the now designated terrorist organization, al- Qa’ida in Iraq and who were ultimately linked to attacks against US troops fighting in Iraq, were admitted into our country as refugees. These two men are now serving hefty prison terms as a result of the U.S. prosecuting them on a terror plot they were involved in while in the United States.

These cases to me highlight that we must be more vigilant, not less, when evaluating persons who are seeking admission to the United States.

- A. Why did you use such broad categories of material support that you determined are exempted—for example, what does “certain routine commercial transactions” mean?”
- B. Would an individual who admitted to transferring \$100 a month over the course of a year to an individual associated with al-Nusra (“*al nooz-rah*”) Front in Syria prior to its designation as a terrorist organization be eligible for an exemption under your authority?
- C. There is already an exemption for material support provided under duress to certain groups. What is the rationale behind now including “substantial pressure that does not rise to the level of duress”? Can you provide examples?
- D. Since this exemption authority was announced, provide the number of aliens who are currently under consideration for application of the exemption by USCIS.

As I mentioned in the hearing, 116 of those released were convicted of homicide, including one convicted of willfully killing a public official. The administration claims that 72% of these were released in accordance with a court order. I've asked for evidence to prove this.

- C. Will you provide this evidence to me?
- D. I'd like to know how the release of these murderers occurred and whether you have made any effort to relocate them?
- E. In the case of releases that were completely voluntary and at the discretion of DHS, will the department please explain to me those decisions and specific cases in detail?

**(12) Intellectual Property Protection**

Over the past several years, the National Intellectual Property Rights Coordination Center (IPR Center) and its partner agencies have collaborated on combatting the growing problem of illegal sales of counterfeit goods and digital content theft online. The IPR Center has actively worked to protect consumers through its enforcement and public education efforts. The Department of Commerce estimates that more than 40 million American jobs and two-thirds of our exports depend on intellectual property. Further, the total global economic value of counterfeit and pirated products has been estimated to be as much as \$650 billion every year. The efforts of the IPR Center and its partner agencies help protect and preserve these jobs and economic benefits, as well as ensure consumers can access safe and innovative products and services. Will you continue to make intellectual property protection a priority at the Department?

**(13) *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)**

As you know, the Ninth Circuit in Rodriguez found that the mandatory detention statute for criminal aliens and aliens in expedited removal proceedings, 8 U.S.C. sections 1226(c) and 1225(b), which provides that the Attorney General "shall" take into custody certain categories of aliens who are in immigration proceedings, does not mean what it says. Rather, the Ninth Circuit found, contrary to the plain language of the statutes, that aliens who are not subject to final orders of removal are entitled to a bond hearing after six months of detention. Further, the court found that after six months of detention, the burden is on the government to show by clear and convincing evidence that the alien's continued detention is justified by a risk of flight or a danger to the community. This decision is contrary to the plain language of the statutes and the Supreme Court's decision in Demore v. Kim, 538 U.S. 510 (2003). Moreover, the result of this decision is that more criminal aliens are being released into our communities. As the Rodriguez court noted, since this bond hearing requirement was put into place by the district court, two-thirds of the aliens who obtained a bond hearing were released.

What was DHS's recommendation to the Department of Justice as to whether the government should see en banc review of the Rodriguez decision and/or a writ of certiorari to the U.S. Supreme Court? Please explain the reason for DHS's position in this case.

QUESTIONS SUBMITTED TO HON. JEH JOHNSON BY SENATOR FEINSTEIN

**Questions for the Record from Senator Dianne Feinstein  
For “Oversight of the Department of Homeland Security,”  
Senate Committee on the Judiciary**

**June 11, 2014**

**Unaccompanied Alien Children**

Starting in 2000, I recognized the need to provide protections to unaccompanied immigrant children entering the U.S. I introduced the Unaccompanied Alien Child Protection Act, and I was very pleased when President Bush signed it into law in 2008. Over the years, custody of these children was ultimately transferred from DHS to the Department of Health and Human Services’ Office of Refugee Resettlement, where they were provided with shelter. For those children deemed ineligible for immigration relief, Congress has mandated their safe repatriation to their country of origin.

Sadly, there is an unprecedented increase in unaccompanied children seeking protection in the United States happening right now. From 2004 to 2011, about 6,800 unaccompanied minors arrived per year, then in 2012, about 13,000 arrived, and in 2013, over 24,000 arrived. It is expected that as many as 90,000 unaccompanied minors will arrive at our southern border in fiscal year 2014. The majority of these children are coming from Honduras, Guatemala, and El Salvador.

Across the board, it is my understanding that the population is younger than in prior years, and that there are more young girls making the long and dangerous journey than ever before, sometimes arriving pregnant after being raped either in their home country or on their journey to the U.S.

Governmental agencies such as the United Nations High Commissioner for Refugees’ (UNHCR), and non-governmental organizations, such as the Women’s Refugee Commission, Kids in Need of Defense, and the Vera Institute for Justice, have been studying these migration patterns and their causes for years. The consensus in their reports is that the primary factor causing the increased migration is increased violence by organized armed criminal actors in their home countries such as drug cartels and gangs or State actors.

Thank you for your leadership in working to ensure the necessary resources to address this emergency, and in coordinating a unified federal response led by FEMA to the increase of unaccompanied children at the southern border. I am appreciative of your efforts to recognize and treat them as the vulnerable children that they are.

- ***While FEMA's management of this emergency situation is welcomed, will DHS consult with experts who have been working with displaced children and are experienced with providing appropriate care?***
- For the Fiscal Year 2015 Homeland Security Appropriations bill, Senator Boxer and I requested that CBP receive funding for potable water and food; access to bathroom facilities and hygiene items; sleeping arrangements for those held overnight; adequate climate control; access to language-appropriate forms and materials; medical care for pregnant women and those with special needs; and access to facilities by nongovernmental organizations.
  - ***Considering that there is an urgent need for such basic minimums of care right now, since these children are being held in Customs and Border Protection's (CBP) custody prior to being released to more long-term shelters, what steps is DHS taking to ensure that these children receive basic minimums of care at all CBP facilities that hold children in custody?***
- ***What about when they are in the care of Immigration and Customs Enforcement (ICE) and in Department of Defense facilities?***
- I unfortunately learned recently of several allegations of serious sexual abuse of children in the custody of the Office of Refugee Resettlement (ORR) in the past few years. These children were allegedly abused by the very staff charged with their protection and care, which deeply concerns me.
  - ***Considering the various federal agencies that will have custody of these children throughout the processing of their immigration court cases, what steps are you taking to ensure that sexual abuse of these unaccompanied minors while in DHS custody is prevented?***
- In 2008, Congress passed an amendment I authored to the Violence Against Women Reauthorization Act of 2013 to allow prosecution of those who sexually abuse an unaccompanied alien child in federal custody, regardless of which federal agency has authority over the minor.
  - ***If sexual abuse incidents occur, what mechanisms for reporting is DHS putting in place?***
- I understand that, in most instances, ORR is required to report the child abuse to state or local authorities. In some instances, however, ORR is required to make its report to the FBI and the FBI determines whether to pursue the case.

- *Is there any consideration of making that reporting process more uniform?*
- *How would DHS hold such violators accountable for their abuse?*
- It is my understanding that Mexican transnational criminal organizations are becoming increasingly involved in these operations – by taxing human smugglers who assist migrants in crossing the border and/or using minors as drug mules to transport illicit substances.
  - *How specifically will the inter-agency Unified Coordination Group that was just created to deal with the influx of unaccompanied minors entering the United States address the increasing involvement of Mexican transnational criminal organizations?*

### **Human Trafficking**

The kidnapping of 276 young girls in Nigeria by Boko Haram has shone a spotlight on the problem of international human trafficking. An article in a recent TIME Magazine demonstrates that these 276 girls are only the “tip of the iceberg.” The article cites the following statistics. I am astounded by the number of trafficking victims.

- 21-30 million people are in some sort of involuntary servitude — the highest number in history.
- Victims from 136 different countries have been found in 118 other countries.
- China, India, and Pakistan have the most slaves, but Mauritania and Haiti have a higher prevalence of slavery.
- Sex trafficking represents from 22 to 58% of trafficking, depending on the report.
- The profit margin on each woman trafficked is 70%.
- From 2007 to 2010, 16% of the countries studied by the U.N.’s office of Drugs and Crime did not record a single conviction for any kind of trafficking.
- *What steps is DHS taking to combat human trafficking?*
- *What challenges do you face in seeking to investigate international trafficking rings, where jurisdictional issues arise?*

- Both the FBI and the Department of Homeland Security have jurisdiction over human trafficking cases. *How does each agency ensure that you are not duplicating the other agency's work?*
- *How do you work with state and local authorities to combat trafficking, if at all?*
- *What steps does DHS take to identify victims of human trafficking that it comes across in its investigations?*
- *Overall, do you have sufficient funding to investigate human trafficking? If you had more funding, could you perform more investigations?*

#### **Humane Treatment of Immigrants Removed from the US**

As previously mentioned, Congress mandated the safe repatriation of children to their countries of origin. Unfortunately, I understand that due to the violence in Honduras, El Salvador, and Guatemala, as well as in Mexico, that mothers also have been coming to the U.S. with their children seeking protection.

- *What is DHS doing to provide basic minimums of care to these families while in detention?*
  - *For families from non-contiguous countries of origin, what steps is DHS taking to ensure their safe repatriation to their country of origin?*
- For those families from Mexico, I understand that many are returned to Mexico in the middle of the night, often to border cities in Mexico with high levels of criminal activity.
  - *Will DHS reconsider this practice, and if so, what alternatives exist to more safely repatriate those families to Mexico?*
- There have been reports that many migrants are repatriated without being provided with their personal belongings, such as wallets, cell phones, and identification.
  - *What steps can DHS take to change this practice?*

#### **Drought and Fire Preparedness**

Secretary Johnson, California is facing a historic drought. For the first time in 15 years, 100% of California is in moderate to exceptional drought according to the U.S.

Drought Monitor. The risks of a severe wildfire season threatening public safety and infrastructure is deeply concerning. It is my view that being prepared for the impacts of drought is critical. These include major wildfires, communities running out of drinking water, and unemployment which will certainly impact migrant and low income agricultural workers.

California's Department of Forestry & Fire Protection reports that since January 1, California has had 2,118 fires on state lands. The average for this period that California normally experiences is 1,255. Clearly, we are facing the risk of a serious fire season in California as we move into the warmer months. I am deeply concerned for California and the West during this year. Therefore I am interested in knowing how your Department is preparing to respond to the disaster conditions California is facing.

- *Secretary Johnson, what actions will the Federal Emergency Management Agency ("FEMA") be taking to ensure federal resources - such as Fire Management Assistance Grants – will be readily available to California when a major wildfire occurs?*
- *FEMA just announced that there is an additional \$40 million in pre-disaster mitigation funding. To what extent will your Department work with California to fund projects to mitigate impacts from drought and wildfire, which are eligible for this funding but have traditionally been under-represented in grants your Department awards?*
- *I continue to have concerns that the Stafford Act does not work well for drought disasters. As you know, drought is an eligible disaster mentioned in the law, but since the Stafford Act became law, 8 states – including California in 2009 – have sought a federal disaster declaration for drought, and all 8 states were denied. Mr. Secretary, will you be prepared to work with California if the disaster conditions get severe enough that the Governor requests a federal disaster declaration?*

### **Maritime Cargo Containers**

As you may know, section 1701 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires that all maritime cargo containers entering the United States be scanned by nonintrusive imaging and radiation detection equipment operating at foreign ports by July 1, 2012. It is my understanding that while this requirement exists, the Department is still testing technologies capable of providing this essential capability for homeland security. California ports receive about 40% of the nation's inbound cargo traffic, with the majority of these containers arriving at ports in regions identified as high-risk Tier I Urban Areas under the Urban Area Security Initiative. This includes the Port of Los Angeles and the Port of Long Beach in Southern California and the Port of San Francisco and Port of Oakland in Northern California.

Given the importance of securing our ports from nuclear materials, I would appreciate the Department's urgent attention to assessing technologies with the capability to scan containers and vehicles accurately for nuclear and radiological material.

- ***Question for the Record: What progress has the Department made in developing passive imaging systems that could meet the statutory requirements of 100% scanning of inbound maritime cargo at foreign ports?***

### **Border Tunnels**

It is my understanding that the Sinaloa cartel, formerly headed by Joaquin "El Chapo" Guzman, is responsible for the vast majority of illegal cross border tunnels, both in California and across the Southwest border as a whole. Two bills which I authored were signed into law in 2006 and 2012 to provide law enforcement with additional tools to investigate illegal tunnel activity and prosecute those responsible. With the passage of these measures, and through close collaboration with trusted partners in Mexico, it is my hope that we can successfully combat tunneling operations at the Southwest border.

- ***Given the arrest of El Chapo Guzman, how do you see the illegal border tunnel threat evolving? Will his arrest disrupt the Sinaloa Cartel's tunneling operations, particularly in the greater San Diego-Tijuana area?***
- ***Do you feel that law enforcement now has the tools it needs to fully address the problem of cross-border smuggling tunnels?***

**Questions for the Record**  
**“Oversight of the Department of Homeland Security”**  
**June 11, 2014**  
**Senator Sheldon Whitehouse**

**The Honorable Jeh Johnson:**

1. As we discussed, DHS is the lead federal agency responsible for working with state and local government agencies, including state and local law enforcement agencies, to help them protect their own information systems against cyber threats. Could you explain, in detail, how DHS carries out this mission? Given the limited resources that many local law enforcement agencies have to respond to cyber attacks, is DHS planning to expand its efforts in this area, particularly with respect to small police departments?
2. During your testimony, we discussed the need for a “common strategy” among the different agencies with responsibility for addressing the cyber threat. Please explain how responsibility for cyber investigations is currently divided among the different components within DHS that have responsibility in this area. How we can improve our current structures – both within DHS and across the government – so that we are in a position to effectively combat the cyber threats we face now as well as the threats we will face in the years ahead?

**Questions for Senator Franken for Secretary Jeh Johnson**

1. The General Services Administration and Immigration Services recently decided to move Minnesota's immigration field office to a location that is largely inaccessible to public transportation, in violation of federal guidelines.
  - a. Will GSA and Immigration Services halt construction on this facility?
  - b. My understanding is that Immigration and Customs Enforcement is vacating an office near the current Immigration Services field office. Could the field office move to the vacating ICE facility?
  - c. Is there another federal government tenant that could occupy the building at the new location?
  
2. DHS is developing a facial recognition program, called the Biometric Optical Surveillance System (BOSS), which raises serious privacy concerns. This program reportedly began in the military and was transferred to DHS several years ago as a potential tool for law enforcement to identify faces in large crowds. Although the BOSS program is still in development, DHS tested the system at a public hockey game in Washington State last year. This program could be beneficial, but it's easy to see how such a system could be used at peaceful political rallies or protests. I am concerned that facial recognition systems are being deployed without adequate oversight or privacy protections.
 

The FBI is also developing a facial recognition system. When I held a hearing on this system in 2012, the FBI told me they only collect facial images—or “faceprints”—from known criminals. It appears that BOSS has bigger ambitions. DHS says Customs and Border Protection has collected faceprints at border crossings. And according to documents released last year under a Freedom of Information Act request, DHS also wants to collect faceprints at airports from passengers enrolled in the Global Entry program.

  - a. What is the status of the BOSS program?
  - b. What privacy safeguards have you put in place to ensure that this program protects privacy and doesn't stifle free speech?
  - c. Are there any limits to whose faceprints can be collected under this program?
  - d. Do you share faceprints with the FBI or other law enforcement entities?
  
3. Last spring, the Transportation Security Administration reduced staffing at the Minneapolis-St. Paul Airport, creating significant congestion at checkpoints. The situation became so bad that airport officials told all passengers to arrive at least 2.5 hours before their flights. A TSA spokesperson blamed across-the-board budget cuts at airports nationwide, and said they “offset”

the congestion by increasing the number of passengers selected for expedited screening through the Pre-Check program.

- a. Does TSA have sufficient resources not only to protect our nation's airports, but to keep them functioning smoothly?
- b. Do you think sending more passengers through expedited Pre-Check screening is a safe way to deal with checkpoint congestion?

QUESTIONS SUBMITTED TO HON. JEH JOHNSON BY SENATOR BLUMENTHAL

**“Oversight of the Department of Homeland Security”  
Written Questions for the Record from Senator Blumenthal**

1. What is DHS doing to identify human trafficking victims and ensure they receive visa benefits guaranteed under the TVPA?

I want to thank the Department of Homeland Security for its efforts to combat human trafficking in our communities and around the world. DHS’ Blue Campaign represents an impressive effort to raise public awareness and enhance cooperation between federal, state, and local law enforcement and human trafficking victim services. That cooperation is particularly important, as non-governmental partners are tremendous sources of knowledge and intelligence for law enforcement, and is crucial to supporting victims of this horrific crime. I have a few questions on what DHS is doing internally with regard to victim services.

- a. I am proud to cosponsor a bipartisan bill encourage state child welfare agencies to screen children for sex and labor trafficking victimization at intake. Has DHS implemented such intake screening procedures in its detention facilities, both for adults and juveniles, to help identify victims of trafficking? If so, what improvements can DHS make in the implementation of these screening procedures?
- b. Can you describe DHS’ current approach to granting continued presence for victims of trafficking?
- c. The DHS fact sheet on continued presence states that “[continued presence] applications should be submitted immediately upon identification of a victim regardless of whether or not the victim has cooperated.” Is DHS policy and procedure consistent with this statement?

2. CBP Internal Affairs Assistant Commissioner Replacement

In your testimony you mentioned your focus on the issue of use of force by agents and officers in the field. I share concerns that many have raised about the seemingly systemic lack of transparency and accountability of CBP with regard to agent conduct. With a new CBP internal affairs chief starting this month, the agency has the opportunity to ensure that all of its agents and officers engage in appropriate conduct in the field.

I am especially concerned about the use of force and abusive conduct by agents and officers in the field as they encounter unaccompanied children. This is a very vulnerable population, with children fleeing their home countries alone, often to escape extreme violence. On the day of the hearing, I saw a complaint documenting 116 children who allegedly suffered abuse – ranging from physical abuse, to denial of adequate food or water, to sexual assault – when they were being apprehended or held by CBP.

- a. With more children coming in contact with CBP agents, I hope any changes to CBP’s internal review policy for investigating complaints will give attention to the uniquely vulnerable population of unaccompanied minors. I invite you to discuss any efforts that

you have been considering or that are underway to ensure that unaccompanied children are treated humanely when they encounter CBP or other DHS agencies.

- b. Please detail any efforts that you have been considering or that are underway to ensure the unaccompanied children have the ability to report allegations of abuse or mistreatment when they are in the custody of CBP, without fear of retaliation. Additionally, what efforts are underway to ensure that legitimate complaints that are filed in the future will result in prompt intervention to remove the children from the abusive situation while they are in the custody of CBP?

QUESTIONS SUBMITTED TO HON. JEH JOHNSON BY SENATOR FLAKE

**Written Questions of Senator Jeff Flake**  
U.S. Senate Committee on the Judiciary  
*“Oversight of the Department of Homeland Security”*  
June 11, 2014

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Frustration with the Situation

1. As I am sure you are aware, with apprehensions in excess of 300,000 for most years since 2000, the Tucson Sector was the busiest border patrol sector on the southern border. I am certain you can appreciate the frustration of Arizonans when they learned that this administration has been this transferring and then purposely releasing illegal aliens from the Rio Grande Valley in Texas into Arizona.
  - a. To your knowledge, were illegal aliens shipped into Texas or California for processing or detention when the Yuma sector in Arizona was being overrun and the Tucson Sector was setting annual records for apprehensions year after year?
  - b. Prior to utilizing the processing capacity available in the Tucson Sector, did you investigate whether existing state and local facilities were available in Texas?

DHS' Plan for UACs in the Tucson Sector

2. It is my understanding that the facility in Nogales is believed to have the capacity for holding 1,500 unaccompanied alien children. It is also my understanding that there are plans for the Nogales facility to be at maximum capacity shortly.
  - a. How long can we expect unaccompanied children to be flown into the Tucson Sector from the Rio Grande Valley?
  - b. How many personnel deployed in the Tucson Sector are currently involved in dealing with unaccompanied children in the Nogales facility?
  - c. What additional resources have been deployed to the Tucson Sector to deal with the additional duties associated with managing the unaccompanied children detention?
  - d. Can you assure Arizona residents, unequivocally, that the administration's actions of flying illegal aliens from Texas into the state of Arizona have not reduced one millimeter of border security in the Tucson or Yuma sectors?
  - e. At any point in this response have officers been removed from the line due to the arrival of unaccompanied children in the Tucson sector?
  - f. The Tucson Sector has the capacity to process illegal aliens as a direct result of the sector's history of record setting apprehensions and illegal crossings. What is

being done to increase the capacity of the Texas border patrol sectors to enable them to process the apprehensions there?

Specific Questions about the Handling of UACs

3. It is my understanding that more than 47,000 unaccompanied children have been apprehended so far this year. I also understand that in round numbers DHS is currently holding 3,000 and Health and Human Services currently has nearly 7,000 in custody and has been releasing or discharging an average of 255 per day in recent weeks.
  - a. While the placement of unaccompanied children falls to the Department of Health and Human Services, are you aware of efforts to ensure that these children are not placed back with individuals that were actively involved in their illegal entry into the country?
  - b. I believe that HHS seeks to place unaccompanied children who have entered the country illegally in the least restrictive status that is in their best interest. As the head of the agency charged with ensuring we have secure borders, have you considered how this undermines your mission?

<b>Question#:</b>	1
<b>Topic:</b>	PREA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 2003, Congress unanimously passed the Prison Rape Elimination Act (PREA) which requires prisons, jails, and juvenile facilities across the country to enact policies designed to prevent sexual assault. The 2013 Leahy-Crapo VAWA reauthorization extended these requirements to all immigration detention facilities under the authority of the Department of Homeland Security.

Can you talk about what new standards the Department has implemented to ensure the detection, prevention, and punishment of rape and sexual assault in DHS facilities?

Can you also comment on reports that ICE policy does not prohibit housing individuals in immigration detention with criminals who have already been convicted and are serving time? There was a recent case in Minnesota where an 18-year-old held by immigration authorities was assaulted by his cell mate, a registered sex offender serving a federal sentence. Does DHS have plans to change this policy?

**Response:** The Department of Homeland Security (DHS) PREA final rule, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 Fed. Reg. 13100 (March 7, 2014) became effective on May 6, 2014. The standards establish robust safeguards against sexual abuse and assault of individuals in DHS custody, including with respect to screening, training, detainee education, reporting, response, medical care, investigative protocols, discipline, monitoring, and oversight. These requirements consolidate and build upon existing DHS policies and procedures for preventing and responding to incidents of sexual abuse and assault. Many of the PREA requirements applicable to U.S. Customs and Border Protection (CBP) entities and employees became applicable as of the effective date; other PREA requirements applicable to detention facilities will be implemented by the end of FY14.

On May 6, 2014, CBP Commissioner Gil Kerlikowske issued the CBP Zero Tolerance Policy prohibiting all forms of sexual abuse of individuals in CBP custody, including detention facilities, during transport, and during processing. In addition to setting forth the prohibition against all forms of sexual abuse and assault the policy also established an upper-level, CBP wide position of Prevention of Sexual Abuse Coordinator (PSA Coordinator). The PSA Coordinator is based in the CBP Privacy and Diversity Office, and has oversight over CBP’s efforts to comply with the final rule adopting Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities. The PSA Coordinator will be responsible for ensuring that CBP conducts annual reviews of all sexual abuse investigations and incident reports to assess and improve sexual abuse intervention, prevention, and response efforts.

<b>Question#:</b>	1
<b>Topic:</b>	PREA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

On May 22, 2014, ICE issued a revised version of its Directive on “Sexual Abuse and Assault Prevention and Intervention” (SAAPI Directive), incorporating additional requirements from PREA that are applicable to the agency. The original SAAPI Directive, promulgated in May 2012, established a zero-tolerance policy with respect to sexual abuse and assault of individuals in ICE custody. It delineated duties of agency employees for timely reporting, coordinating response and investigation, and effective monitoring of all incidents of sexual abuse or assault of individuals in ICE custody; together, these protocols already met many of the agency’s requirements with respect to the PREA standards. Pursuant to the original Directive, ICE has developed and deployed new comprehensive sexual assault prevention training for all ICE employees who may have contact with detainees, and distributed new detainee awareness and education materials to all detention facilities. ICE has also designated a full-time agency-wide Prevention of Sexual Assault (PSA) Coordinator to oversee efforts to improve prevention and response practices, and designated at least one PSA Coordinator in each Enforcement and Removal Operations (ERO) Field Office to ensure field compliance with ICE sexual assault policies. Among other things, the revisions to the Directive outline procedures by which ICE will make victim services available to victims of sexual assault, and establish requirements relating to accommodation of detainees with disabilities or limited English proficiency.

ICE is also finalizing a new policy on the use of ERO hold rooms, integrating requirements from the PREA standards specifically applicable to ICE holding facilities. In addition, ICE has delivered comprehensive specialized training for medical care and mental health care staff and law enforcement investigators, and distributed new detainee awareness and education materials to field offices. Also, in addition to training originally established in the SAAPI Directive, ICE will be retooling training on sexual abuse prevention and intervention issues for agency employees who may have contact with detainees, in order to incorporate new training topics required by PREA.

Furthermore, ICE’s 2008 and 2011 Performance-Based National Detention Standards (PBNDS) and Family Residential Standards, which accomplish most of the safeguards enumerated in the PREA standards for detention facilities, currently apply to facilities housing approximately 94 percent of ICE’s average detainee population (calculated excluding those detainees who are held in Department of Justice (DOJ)-contracted facilities, and are therefore covered by DOJ PREA regulations). ICE is revising PBNDS 2011 to incorporate the additional PREA requirements for detention facilities, and will pursue implementation of these new standards at all dedicated detention facilities within 18 months, if not sooner. Although not required by PREA, ICE will also proactively pursue options for incorporating the standards at a number of other detention facilities.

<b>Question#:</b>	1
<b>Topic:</b>	PREA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

Many facilities typically house both criminal inmates and civil ICE detainees with varying criminal backgrounds within each population. Therefore, the most appropriate method of ensuring the safety and security of the facility population as a whole is by housing detainees pursuant to individualized risk assessments that are not based solely on whether they are detained for civil or criminal purposes. ICE requires personnel to assess each individual's risk level and appropriate custody classification upon intake. This system incorporates objective, documented criteria such as criminal history, escape history, institutional disciplinary history, documented violent episodes or incidents, and history of victimization. Consequently, low-risk detainees are not permitted to be housed with anyone with a history of violence deemed to be a threat to the detainee population.

<b>Question#:</b>	2
<b>Topic:</b>	TVPA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Trafficking Victims Protection Act (TVPA), originally passed in 2000, created two new visa categories to help victims of crime by allowing them to remain in the United States to assist law enforcement. The U visa ensures that victims of domestic violence or sexual assault will not be deported before they can participate in holding their abusers accountable. The T visa assists trafficking victims who were brought to the United States for labor or sexual exploitation. I was proud to lead the reauthorization of the TVPA last year and expand eligibility in both of these categories. I know that you share my belief that victims must feel free to come forward and seek justice regardless of their immigration status.

Can you tell this Committee how many T visas and U visas have been granted since their creation in 2000?

**Response:** Please see chart:

U.S. Citizenship and Immigration Services						
Form I-914 - Application for T Nonimmigrant Status, Form I-918 - Petition for U Nonimmigrant Status						
Approvals						
Fiscal Year 2002-2014 (May)						
FISCAL YEAR	Victims (T-1)	Family of Victims (T-2,3,4,5)	I-914 Total Approvals	Victims (U-1)	Family of Victims (U-2,3,4,5)	I-918 Total Approvals
	Approved	Approved		Approved	Approved	
2002	17	9	26			
2003	283	51	334			
2004	163	106	269			
2005	113	73	186			
2006	212	95	307			
2007	287	257	544			
2008	243	228	471			
2009	313	273	586	5,825	2,838	8,663
2010	447	349	796	10,073	9,315	19,388
2011	557	722	1,279	10,088	7,602	17,690
2012	674	758	1,432	10,122	7,421	17,543
2013	848	975	1,823	10,030	8,198	18,228
2014	372	464	836	10,020	8,085	18,105

<b>Question#:</b>	2
<b>Topic:</b>	TVPA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What efforts in the Department undertaking to assist victims of abuse, including trafficking?

**Response:** The U.S. Customs and Border Protection (CBP) Border Patrol apprehends thousands of individuals attempting to enter the U.S. unlawfully each year, and takes reports of abuse or trafficking very seriously. If a detainee reports abuse, trafficking, or if there is any reasonable belief that a substantial risk of abuse or trafficking exists, CBP makes all efforts to ensure the detainee's safety. When issues arise, Border Patrol personnel notify supervisory staff and a determination is made about the individual's need for medical attention. All detainees are treated with the dignity and respect that should be afforded to all individuals.

In addition, CBP trains its frontline officers and agents to detect and identify persons who may potentially be victims of trafficking. To ensure the health, welfare, and safety of this vulnerable group, CBP immediately separates adults from children, unless a family relationship can be established. The process requires that officers and agents complete a form titled Unaccompanied Alien Child Screening Addendum (CBP Form 93) sheet with specific questions designed to help determine whether the person appears to be a potential victim of human trafficking. The form is a tool that assists officers in asking certain questions in identifying victims of human trafficking. Completion of this form was required under Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) for Unaccompanied Alien Children who are citizens or habitual residents of contiguous countries; and it becomes a part of the child's case file. Even though the TVPRA only mandates that UAC from contiguous countries (Mexico and Canada) be interviewed, as a manner of practice, the CBP Form 93 is completed for all UAC.

For its part, through its Victim Assistance Program (VAP), U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) staff personnel respond to the needs of those victimized by a wide range of crimes, including human trafficking, financial crime, child pornography, child sex tourism, white collar crime, and human rights abuses. HSI's VAP has four full-time forensic interviewers that have the ability to conduct sensitive, age-appropriate, legally defensible interviews to assist in prosecuting offenders. Additionally, HSI's VAP provides guidance to DHS investigative field offices regarding any victim-related issues they may encounter while also establishing training protocols, providing technical assistance, and continually monitoring compliance with federal crime victim statutes.

The Department has 26 full-time Victim Assistant Specialists located in 24 field offices in addition to approximately 250 specially trained special agent Victim Assistance Coordinators worldwide. These trained individuals provide a critical resource to DHS-

<b>Question#:</b>	2
<b>Topic:</b>	TVPA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

led investigations and criminal prosecutions by ensuring that victims have access to the rights and services to which they are entitled by law, as well as the assistance they need so that they can participate actively and fully in the criminal justice system process.

**Question:** Just last month you said you were “surprised” to learn that courthouses were not on the list of “sensitive locations,” like schools, hospitals and houses of worship where immigration officers may not carry out immigration enforcement actions except in exigent circumstances.

What actions are you taking to change this policy to ensure that victims will feel safe in coming forward to seek the protection of our justice system?

**Response:** As Secretary Johnson has testified before, conducting immigration enforcement actions at courthouses is unique. While courthouses are not included in ICE’s October 24, 2011 policy memorandum, *Enforcement Actions at, or Focused on, Sensitive Locations*, ICE has issued operational guidance to its officers and agents regarding enforcement actions at courthouses. This guidance allows law enforcement officers to make targeted arrests of individuals who are ICE’s top civil enforcement priorities because they pose a danger to national security or a risk to public safety. Additionally, this guidance specifies that enforcement actions at or near courthouses will take place only against specific, targeted aliens, rather than other individuals who may be “collaterally” present, and that, wherever practical, enforcement actions will take place outside of public areas of the courthouse. ICE’s enforcement actions are designed to be mindful of any potential state and local impact, including the impact on individuals who need the protection of our legal system; therefore, all priority arrests planned on courthouse grounds are coordinated beforehand with courthouse personnel. The Department is continuing to review existing immigration enforcement practices and procedures including those applicable to courthouse enforcement, to ensure that our resources are strategically focused on our enforcement priorities.

<b>Question#:</b>	3
<b>Topic:</b>	preclearance
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I understand the Department is working to station more U.S. officials in Canada to prescreen passengers before they arrive at the Canadian border. These preclearance operations help to expedite legitimate trade and tourism with Canada – which is Vermont's largest trading partner – while also saving money and enhancing security. I am working with the Department on how we can help pave the way for expanded preclearance operations in Canada, and look forward to our ongoing collaboration on this issue.

From your perspective, what are the greatest benefits of expanding U.S. preclearance operations in Canada?

**Response:** Preclearance and pre-inspection helps to facilitate travel and trade while enhancing the security of both countries. CBP currently conducts preclearance of commercial air passengers at eight airports in Canada. As well as assisting in identifying terrorists, criminals, and other national security threats prior to boarding aircraft bound for the United States, they provide economic opportunities to air carriers and tourism stakeholders. Additionally the air preclearance locations support tourism and trade by relieving congestion at U.S. “gateway” airports and reduce airline delays. “Domestic” style arrivals at U.S. airports provide smoother and more efficient transfers.

Under the Beyond the Border Action Plan released in December, 2011, U.S. Customs and Border Protection (CBP) partnered with the Canada Border Services Agency, Public Safety Canada, and Transport Canada on a phased approach to the cargo pre-inspection pilot. Phase II of the pilot was implemented in February 2014 at the Peace Bridge crossing in Buffalo, New York/Fort Erie, Ontario. Phase II will last one year and will test feasibility and the program’s ability to reduce wait times and border congestion by conducting the CBP’s primary inspection of cargo in Canada. At the end of Phase II, the pilot will be evaluated to determine the benefits of conducting pre-inspection activities in Canada. Expansion of the pre-inspection concept may be considered based upon, among other things, its ability to reduce wait times and border congestion while ensuring continued safety and security at our borders.

The Department of Homeland Security and Public Safety Canada also are engaged in ongoing discussions to negotiate and conclude a new agreement that would provide for preclearance in the land, marine, and rail environments, and update the existing 2001 United States-Canada Air Transport Agreement. This is another key initiative included in the Beyond the Border Action Plan. Once a new agreement is in place and all legal and operational conditions have been achieved CBP will be in a position to consider whether to expand its preclearance operations. CBP carefully analyzes each request for expanding pre-inspection or preclearance service, particularly in these times of limited

<b>Question#:</b>	3
<b>Topic:</b>	preclearance
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

budgets and resources, to ensure such an operation would be cost effective and is within the legal construct of the bi-lateral agreement with Canada.

<b>Question#:</b>	4
<b>Topic:</b>	border searches
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Department Homeland Security maintains it has the authority to conduct suspicion-less searches of Americans' phones, tablets and laptops when they cross the border into the country, based on the "border search" exception to the Fourth Amendment. But these electronic devices that we all carry around with us contain enormous amounts of very personal information about our everyday lives. This is a very real concern for Vermonters who cross regularly into Canada to visit friends and family.

What is DHS doing to limit the use of these warrantless, but extremely intrusive, searches?

**Response:** At the border (or its functional equivalent, such as at an international airport), U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are responsible for ensuring compliance with customs, immigration and other laws, and both have broad authority to conduct border searches of persons and things upon their entry into or exit out of the country. This authority stems from a long-standing and well recognized exception to the probable cause and warrant requirements of the Fourth Amendment and is premised on the Government's interest in protecting its citizens from the entry of persons and items harmful to U.S. interests. There are also numerous statutory provisions reflecting the authority of ICE and CBP to conduct border searches in connection with the inspection of persons, merchandise, baggage, conveyances, and containers, including computers and other electronic devices, entering the United States. *See, e.g.*, 19 U.S.C. §§ 482 (search of vehicles and persons), 1461 (inspection of merchandise and baggage), 1496 (examination of baggage), 1499 (examination of merchandise), 1581 (boarding vessels), 1582 (search of persons and baggage), 1583 (examination of outbound mail), 1589a (enforcement authority of customs officers), and 1595 (searches and seizures); 8 U.S.C. § 1357 (powers of immigration officers).

CBP and ICE issued separate directives governing the border search of information in electronic devices in 2009, and each continues to operate in accordance with the policies outlined in their respective Directive. CBP's and ICE's policies regulating the conduct of border searches of electronic devices are CBP Directive 3340-049 and ICE Directive 7-6.1. These directives have been made available to the public, and provide nationwide policy guidance to both CBP and ICE personnel.

In addition, both directives have internal audit mechanisms, and CBP is currently conducting an in-depth audit of officer reporting on electronic device searches. If any deficiencies are detected by the audit, CBP will conduct additional onsite training at any location necessary. ICE Special Agents have separate, mandatory training on border searches which highlight the procedures outlined in the ICE directive.

<b>Question#:</b>	4
<b>Topic:</b>	border searches
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
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CBP utilizes a risk management approach in determining when to conduct border searches of electronic devices. Once CBP detains, seizes, or retains electronic devices and turns such devices over to ICE for analysis and investigation, the ICE policy immediately applies. ICE Special Agents must comply with all applicable laws and internal ICE policy whether CBP conducts the initial border search or whether a device is turned over to ICE by CBP for analysis and investigation. Border searches of electronic devices are conducted on a small percentage of travelers encountered by CBP and ICE.

<b>Question#:</b>	5
<b>Topic:</b>	I-130 Application Backlog
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Stand-alone immigration applications for the immediate relatives of United States citizens, called "I-130 applications," have been seriously backlogged, causing very long waits. I understand that USCIS needed to prioritize processing the DACA applications.

What is the Department's plan to alleviate the backlog for these other highly deserving applications where the immediate relatives of U.S. citizens sometimes have to wait almost a year to receive an adjudication of their petitions?

**Response:** USCIS has worked diligently to eliminate the backlog of stand-alone I-130 immediate relative petitions. Between August 2012 and October 2013, over 163,000 stand-alone I-130s were shipped to field offices for adjudication. In October 2013, USCIS began transferring from the National Benefits Center to the four Service Centers stand-alone I-130s filed on behalf of an immediate relative of a U.S. citizen. Currently, USCIS field offices have just over 1,100 cases from the original backlog left to adjudicate, and all of these cases are currently in the process of being worked. As of June 2014, processing times have been reduced to within the processing goal of 5 months or less at three of the centers and to 5.5 months at the fourth.

**Question:** What changes to the process is the Department considering to ensure that the backlog does not increase again once it is eliminated?

**Response:** USCIS continues to prioritize this important workload and routinely monitors adjudication rates to avoid large backlogs developing. USCIS will reallocate resources as needed to address any filing surges that may arise.

<b>Question#:</b>	6
<b>Topic:</b>	UAC
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Once detained, unaccompanied minors are placed into removal proceedings and many have no legal representation. The Senate's comprehensive immigration reform bill would give the Attorney General authority to grant unaccompanied children a lawyer to ensure that these young people get relief if they are so entitled.

I applaud the efforts of Judge Katzmann, the chief judge of the Second Circuit who has worked hard to secure private funding to hire lawyers for immigrants in need. And I know the Administration has made efforts to expand AmeriCorps to meet this growing need. But we need a permanent solution that does not rely on private donations or the preferences of a particular administration.

Do you agree that providing young children with legal assistance streamlines the process for judges who are better able to identify meritorious claims and make informed decisions? How has representation for immigrants been shown to impact the efficiency and capacity of immigration proceedings? Do you believe legislative reform is necessary to address this issue?

**Response:** Competent legal representation in removal proceedings can assist respondents and potentially increase efficiency in the process. To assist in the efficient and effective adjudication of immigration court proceedings involving unaccompanied children, the Department of Justice's Executive Office for Immigration Review and the Corporation for National and Community Service are jointly sponsoring a program that would provide grants that would enable grantees to provide legal services to unaccompanied children. Additionally, HHS funds legal representation for unaccompanied children in certain limited circumstances. HHS is also working to enhance its legal services programs. DHS would refer you to these agencies for additional background on these efforts.

<b>Question#:</b>	7
<b>Topic:</b>	Haji Gulalai
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Earlier this year, the Washington Post revealed that a former senior official of Afghanistan's National Directorate of Security (NDS) had secretly relocated to the United States several years ago. According to the article, Haji Gulalai was able to obtain asylum despite being responsible for administering and overseeing abhorrent acts of cruelty and torture against prisoners detained at NDS facilities. Reports by the United Nations have also documented systemic mistreatment and torture of prisoners by the NDS throughout Afghanistan during Mr. Gulalai's tenure as head of the detention and interrogation division.

These allegations are deeply alarming and raise troubling questions about how Mr. Gulalai was permitted to enter the United States and receive asylum. It would be particularly disturbing if Mr. Gulalai received preferential treatment, given that thousands of Afghan nationals have been denied special immigrant visas to enter the United States despite risking their lives to work in support of U.S. military efforts.

Please provide a detailed account of how Mr. Gulalai entered the United States; including when and how his family was permitted to enter the country.

Was the Department of Homeland Security aware of the allegations against Mr. Gulalai when he was admitted to the United States?

What is Mr. Gulalai's current immigration status?

**Response:** We will be happy to brief your staff regarding Mr. Gulalai and his status.

<b>Question#:</b>	8
<b>Topic:</b>	human trafficking victims
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Richard Blumenthal
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What is DHS doing to identify human trafficking victims and ensure they receive visa benefits guaranteed under the TVPA?

I want to thank the Department of Homeland Security for its efforts to combat human trafficking in our communities and around the world. DHS' Blue Campaign represents an impressive effort to raise public awareness and enhance cooperation between federal, state, and local law enforcement and human trafficking victim services. That cooperation is particularly important, as non-governmental partners are tremendous sources of knowledge and intelligence for law enforcement, and is crucial to supporting victims of this horrific crime. I have a few questions on what DHS is doing internally with regard to victim services.

I am proud to cosponsor a bipartisan bill encourage state child welfare agencies to screen children for sex and labor trafficking victimization at intake. Has DHS implemented such intake screening procedures in its detention facilities, both for adults and juveniles, to help identify victims of trafficking? If so, what improvements can DHS make in the implementation of these screening procedures?

Can you describe DHS' current approach to granting continued presence for victims of trafficking?

The DHS fact sheet on continued presence states that "[continued presence] applications should be submitted immediately upon identification of a victim regardless of whether or not the victim has cooperated." Is DHS policy and procedure consistent with this statement?

**Response:** The U.S. Department of Homeland Security (DHS) has created the Blue Campaign to coordinate and enhance the efforts of its various components to combat human trafficking. DHS uses a victim-centered approach to combat human trafficking, which places equal value on the identification and stabilization of victims and the investigation and prosecution of suspected traffickers. Victims are crucial to investigations and prosecutions. DHS also provides immigration benefits to non-citizen victims. DHS can help victims through DHS victim assistance resources or can help connect victims to services in their community.

DHS is responsible for investigating human trafficking, arresting suspected traffickers, and protecting victims. U.S. Immigration and Customs Enforcement (ICE) is the lead DHS law enforcement agency that investigates human trafficking crimes and is also responsible for determining whether an individual should be granted Continued Presence. U.S. Citizenship and Immigration Service (USCIS) is the DHS agency responsible for

<b>Question#:</b>	8
<b>Topic:</b>	human trafficking victims
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determining whether an individual is eligible for T nonimmigrant status as authorized under the TVPRA.

DHS criminal investigators and victim assistance personnel provide on-site victim assistance. They also help operational planners with victim issues routinely encountered in complex cases that feature large numbers of rescued victims. DHS also regularly trains domestic and international law enforcement personnel on human trafficking and coordinates outreach, training, and services with other federal, state, and local agencies, faith-based organizations, and non-governmental victim service providers on identifying trafficking indicators. This training has been critical in allowing these partners to help victims report those crimes committed against them to appropriate law enforcement agencies.

Regarding intake screening procedures at detention facilities, ICE utilizes a Risk Classification Assessment (RCA) module nationwide to provide an initial recommendation on whether to detain or release an alien, custody classification level if detained, or level of community supervision if released. These data help to identify vulnerable populations, including adult victims of human trafficking, early in the process, so that ICE may make more informed classification decisions based on risk level. ICE Officers completing the RCA are instructed to ask each alien being processed if "Since entering the United States, has someone intimidated, deceived, obligated, or forced you into prostitution or labor against your will?" If the alien answers positively, the claim is investigated further by ICE.

With respect to individuals in detention, DHS authorizes their continued presence in the United States where an appropriate law enforcement agency identifies them as victims of a severe form of trafficking who are potential witnesses in the investigation or prosecution of the trafficker. When such requests are received, they are first vetted with ICE Special Agents in Charge and the corresponding U.S. Attorney's Office. Once these reviewers determine that the presence of the victim of human trafficking is needed, DHS may grant Continued Presence. DHS may also release these individuals under appropriate supervision consistent with its enforcement priorities, while they await their next hearing date before an immigration judge.

To be eligible for Continued Presence, a person needs to be identified as a victim of human trafficking and a potential witness in the investigation or prosecution of the trafficker. Cooperation with law enforcement, however, is not required for Continued Presence to be granted. Individuals who are eligible for Continued Presence are permitted to lawfully remain in the United States for one year (with renewal possible), which includes the period during any ongoing investigation of the human trafficking-related crimes and conclusion of any civil action the victims may institute. Individuals

<b>Question#:</b>	8
<b>Topic:</b>	human trafficking victims
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may also self-petition for T nonimmigrant status with USCIS. Individuals are granted T nonimmigrant status for 4 years and those who remain in T nonimmigrant status for 3 years may be eligible to adjust status to lawful permanent resident.

<b>Question#:</b>	9
<b>Topic:</b>	CBP IA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Richard Blumenthal
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In your testimony you mentioned your focus on the issue of use of force by agents and officers in the field. I share concerns that many have raised about the seemingly systemic lack of transparency and accountability of CBP with regard to agent conduct. With a new CBP internal affairs chief starting this month, the agency has the opportunity to ensure that all of its agents and officers engage in appropriate conduct in the field.

I am especially concerned about the use of force and abusive conduct by agents and officers in the field as they encounter unaccompanied children. This is a very vulnerable population, with children fleeing their home countries alone, often to escape extreme violence. On the day of the hearing, I saw a complaint documenting 116 children who allegedly suffered abuse – ranging from physical abuse, to denial of adequate food or water, to sexual assault – when they were being apprehended or held by CBP.

With more children coming in contact with CBP agents, I hope any changes to CBP’s internal review policy for investigating complaints will give attention to the uniquely vulnerable population of unaccompanied minors. I invite you to discuss any efforts that you have been considering or that are underway to ensure that unaccompanied children are treated humanely when they encounter CBP or other DHS agencies.

Please detail any efforts that you have been considering or that are underway to ensure the unaccompanied children have the ability to report allegations of abuse or mistreatment when they are in the custody of CBP, without fear of retaliation.

**Response:** U.S. Customs and Border Protection (CBP) has several avenues for the reporting and receipt of allegations of abuse or mistreatment including reporting via telephone or email to the Department of Homeland Security’s (DHS) Office of Inspector General (OIG), Office of Civil Rights and Civil Liberties, U.S. Immigration and Customs Enforcement’s (ICE) Office of Professional Responsibility (OPR), CBP’s Office of Internal Affairs (IA), and the ICE/CBP Joint Intake Center. OIG contact information in English and Spanish is generally posted within CBP holding facilities and detainees may file complaints using that information. CBP makes it clear to all individuals that they can file a complaint without fear of retaliation and any allegations of retaliation are documented and investigated by the appropriate internal investigative agency.

The DHS Office for Civil Rights and Civil Liberties (CRCL) also receives and investigates complaints, whether directly from children or from their representatives, family members, advocacy organizations, or other channels, involving the apprehension, care, and custody of unaccompanied children.

<b>Question#:</b>	9
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<b>Hearing:</b>	Oversight of the Department of Homeland Security
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Once a complaint or allegation is received and documented, it is referred to the appropriate investigative entity to be fully and completely investigated. The complaint mentioned involving 116 children resulted in 116 individual cases being opened and CBP/IA, ICE/OPR, and the DHS/OIG conducting investigations into each allegation. Any future allegation involving unaccompanied children received will likewise be fully investigated.

Additionally, CBP was recently given the authority to conduct its own internal criminal investigations through the designation of CBP/IA special agents as general schedule series 1811 criminal investigators. This will allow for better transparency and accountability in these as well as other issues involving allegations of employee misconduct. Also, CBP is developing new protocols in responding to allegations of use of force. This will include cross-component, CBP/IA lead use of force response teams and the establishment of use of force review boards that will look at all use of force incidents to include continuous review of policy, tactics, and training.

DHS is committed to providing a safe and secure environment for unaccompanied children and to quickly and safely transfer them to the Department of Health and Human Services' (HHS) care and custody, consistent with legal requirements. DHS is also working in tandem with HHS to accelerate processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children. Additionally, DHS and HHS are increasing Spanish-speaking case management staff, increasing staff handling incoming calls from parents or guardians, and surging staff to manage the intake of CBP referrals to track shelter bed capacity and facilitate shelter designations.

DHS makes every effort to provide appropriate care for unaccompanied children. Some of the steps include designating certain facilities for children only to protect them from unrelated adults, and to provide a secure environment. We have taken steps along the southwest border to ensure children have access to showers and clean clothes, providing three meals daily with access to drinks and snacks. As a result of the recent influx of children along the border, we have deployed Federal Emergency Management Agency Corps to assist with the general care of children, contracted with food service providers to ensure those children receive adequate and timely meals, and contracted with medical care providers, as well as providing recreational activities when possible.

<b>Question#:</b>	9
<b>Topic:</b>	CBP IA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Richard Blumenthal
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**Question:** Additionally, what efforts are underway to ensure that legitimate complaints that are filed in the future will result in prompt intervention to remove the children from the abusive situation while they are in the custody of CBP?

**Response:** When an allegation of alleged abuse or mistreatment is received through the above reporting process, immediate steps are taken to investigate the claim, determine the status of the complainant's case, and if applicable they are removed from the location where the abuse or mistreatment is alleged to have occurred. Any allegation of sexual abuse of a detainee in a CBP holding facility is handled in accordance with the DHS Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, codified at 6 CFR Part 115. Among other requirements, when agency personnel have a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, they are required to take immediate action to protect the detainee. Moreover, the first law enforcement staff member to respond to a report, or his or her supervisor, is required to separate the alleged victim and abuser and preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence. In addition, agency personnel are required to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse.

<b>Question#:</b>	10
<b>Topic:</b>	displaced children
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Starting in 2000, I recognized the need to provide protections to unaccompanied immigrant children entering the U.S. I introduced the Unaccompanied Alien Child Protection Act, and I was very pleased when President Bush signed it into law in 2008. Over the years, custody of these children was ultimately transferred from DHS to the Department of Health and Human Services' Office of Refugee Resettlement, where they were provided with shelter. For those children deemed ineligible for immigration relief, Congress has mandated their safe repatriation to their country of origin.

Sadly, there is an unprecedented increase in unaccompanied children seeking protection in the United States happening right now. From 2004 to 2011, about 6,800 unaccompanied minors arrived per year, then in 2012, about 13,000 arrived, and in 2013, over 24,000 arrived. It is expected that as many as 90,000 unaccompanied minors will arrive at our southern border in fiscal year 2014. The majority of these children are coming from Honduras, Guatemala, and El Salvador.

Across the board, it is my understanding that the population is younger than in prior years, and that there are more young girls making the long and dangerous journey than ever before, sometimes arriving pregnant after being raped either in their home country or on their journey to the U.S.

Governmental agencies such as the United Nations High Commissioner for Refugees' (UNHCR), and non-governmental organizations, such as the Women's Refugee Commission, Kids in Need of Defense, and the Vera Institute for Justice, have been studying these migration patterns and their causes for years. The consensus in their reports is that the primary factor causing the increased migration is increased violence by organized armed criminal actors in their home countries such as drug cartels and gangs or State actors.

Thank you for your leadership in working to ensure the necessary resources to address this emergency, and in coordinating a unified federal response led by FEMA to the increase of unaccompanied children at the southern border. I am appreciative of your efforts to recognize and treat them as the vulnerable children that they are.

While FEMA's management of this emergency situation is welcomed, will DHS consult with experts who have been working with displaced children and are experienced with providing appropriate care?

**Response:** On June 2nd, President Obama directed the Secretary of Homeland Security to establish an interagency Unified Coordination Group to coordinate the assets of the

<b>Question#:</b>	10
<b>Topic:</b>	displaced children
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
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entire federal government to address the humanitarian aspects of the situation. This group includes DHS and all of its components, the Departments of Health and Human Services (HHS), Defense, Justice, State, and the General Services Administration, and the American Red Cross.

The Secretary of Homeland Security designated FEMA Administrator Fugate to serve as the Federal Coordinating Official for the U.S. Government-wide response to the recent influx of unaccompanied children entering the United States. FEMA has served as the lead coordinator to maximize the federal support that can be provided to CBP, ICE, and HHS and the Department of Defense, the lead agencies. These agencies are jointly addressing the immediate needs of unaccompanied children. As the influx of unaccompanied children is currently being managed and the inflow rates are reducing, FEMA is transitioning the established FEMA managed task forces back to the responsible agencies. In addition, FEMA is developing a UAC surge management plan that captures the lessons learned of the coordination effort and incorporates them into the plan to assist Federal agencies to address any future surges across the borders of the United States of unaccompanied children.

<b>Question#:</b>	11
<b>Topic:</b>	funding
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** For the Fiscal Year 2015 Homeland Security Appropriations bill, Senator Boxer and I requested that CBP receive funding for potable water and food; access to bathroom facilities and hygiene items; sleeping arrangements for those held overnight; adequate climate control; access to language-appropriate forms and materials; medical care for pregnant women and those with special needs; and access to facilities by nongovernmental organizations.

Considering that there is an urgent need for such basic minimums of care right now, since these children are being held in Customs and Border Protection's (CBP) custody prior to being released to more long-term shelters, what steps is DHS taking to ensure that these children receive basic minimums of care at all CBP facilities that hold children in custody?

**Response:** The Department of Homeland Security (DHS) is ensuring that the children's nutritional and hygienic needs are met while in our custody; that children are provided regular meals and access to drinks and snacks during the day; that they receive constant supervision; and that children who exhibit signs of illness or disease are given proper medical care. We have also made clear that all individuals will be treated with dignity and respect, and any instances of mistreatment reported to us will be investigated.

DHS is also working in tandem with HHS to accelerate processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children. Additionally, DHS and HHS are increasing Spanish-speaking case management staff, increasing staff handling incoming calls from parents or guardians, and surging staff to manage the intake of CBP referrals to track shelter bed capacity and facilitate shelter designations.

Throughout the Rio Grande Valley Sector, we are conducting public health screening for all those who come into our facilities for any symptoms of contagious diseases or other possible public health concerns. We are also working to ensure individuals with other medical needs have access to appropriate services.

To support these efforts, the American Red Cross has established its Restoring Family Links program in Nogales, and Save the Children is providing training to FEMA Corp staff working in the RGV and Nogales border stations. Catholic Charities, Save the Children and other non-governmental organizations are providing support to family units.

<b>Question#:</b>	11
<b>Topic:</b>	funding
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
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**Question:** What about when they are in the care of Immigration and Customs Enforcement (ICE) and in Department of Defense facilities?

**Response:** ICE is responsible for providing the majority of transports of unaccompanied children from CBP facilities to HHS' Office of Refugee Resettlement (ORR) facilities located throughout the country. ICE considers unaccompanied children to be a particularly vulnerable population that must be treated with special consideration and care. During the limited time that ICE maintains physical custody of unaccompanied children pending transfer to ORR, minors are provided meals regularly and have access to drinks and snacks throughout the day. Additionally, ICE has provided supplies such as diapers, baby formula, seasonal clothing, blankets, bottles, and baby shampoo to assist with the needs of these minors.

With regard to the care of unaccompanied children at Department of Defense facilities, DHS defers to HHS.

<b>Question#:</b>	12
<b>Topic:</b>	ORR I
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I unfortunately learned recently of several allegations of serious sexual abuse of children in the custody of the Office of Refugee Resettlement (ORR) in the past few years. These children were allegedly abused by the very staff charged with their protection and care, which deeply concerns me.

Considering the various federal agencies that will have custody of these children throughout the processing of their immigration court cases, what steps are you taking to ensure that sexual abuse of these unaccompanied minors while in DHS custody is prevented?

**Response:** Generally, unaccompanied children are in Immigration and Customs Enforcement (ICE) custody for a very limited amount of time until they are transferred to ORR. However, while UAC are in ICE custody, ICE makes every effort to maintain sufficient supervision and continuous monitoring.

The Department of Homeland Security (DHS) Prison Rape Elimination Act of 2003 (PREA) final rule, "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," 79 Fed. Reg. 13100 (March 7, 2014) became effective on May 6, 2014. The standards establish robust safeguards against sexual abuse and assault of individuals in DHS custody, including with respect to screening, training, detainee education, reporting, response, medical care, investigative protocols, discipline, and monitoring and oversight. These requirements consolidate and build upon existing DHS policies and procedures for preventing and responding to incidents of sexual abuse and assault. Many of the PREA requirements applicable to U.S. Customs and Border Protection entities and employees became applicable as of the effective date; other PREA requirements applicable to detention facilities will be implemented by the end of FY 2014.

<b>Question#:</b>	13
<b>Topic:</b>	abuse
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 2008, Congress passed an amendment I authored to the Violence Against Women Reauthorization Act of 2013 to allow prosecution of those who sexually abuse an unaccompanied alien child in federal custody, regardless of which federal agency has authority over the minor.

If sexual abuse incidents occur, what mechanisms for reporting is DHS putting in place?

**Response:** Although the Department of Homeland Security (DHS) is not responsible for the long-term custody, care, and placement of unaccompanied children, which is the responsibility of the Department of Health and Human Services (HHS), such children can temporarily be in DHS custody as a result of being apprehended or transported by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement (ICE). Should an incident of abuse occur while in CBP or ICE custody it would be handled in accordance with the appropriate procedures and the Department's "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," which became effective on May 6, 2014.

In accordance with *ICE Directive 11062.2, "Sexual Abuse and Assault Prevention and Intervention,"* which also covers individuals who are being transported by ICE, and was reissued in May 2014, all ICE employees must immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or assault of an individual in ICE custody to a supervisor or a designated official. Furthermore, the Field Office Director must ensure that facilities are aware of their obligation to report allegations of sexual abuse and assault to ICE and the appropriate law enforcement agency. Once the ICE field office receives a report of sexual abuse or assault from the facility, the field office is required to timely report the allegation to ICE headquarters.

In addition to the reporting requirements, the Directive requires that the ICE field office ensure that the alleged victim in ICE custody is provided immediate protection from the alleged abuser and that the facility place the victim in the least restrictive housing option possible. Additionally, every alleged victim is provided emergency medical and mental services and ongoing care, as appropriate, to include a referral for a forensic medical exam.

The Directive also requires that ICE offer victim services to all victims of sexual abuse and assault, and specifies steps that must be taken to accommodate detainees with disabilities or limited English proficiency. ICE would also inform the HHS Office of Refugee Resettlement of the allegation received, if the child is in their custody or being transferred to their custody

<b>Question#:</b>	14
<b>Topic:</b>	ORR 2
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I understand that, in most instances, ORR is required to report the child abuse to state or local authorities. In some instances, however, ORR is required to make its report to the FBI and the FBI determines whether to pursue the case.

Is there any consideration of making that reporting process more uniform?

**Response:** ICE defers to ORR.

**Question:** How would DHS hold such violators accountable for their abuse?

**Response:** Depending on the circumstances, a number of different entities could be best suited to handle the investigation, whether it is another law enforcement agency, either federal or state/local; the ICE Office of Professional Responsibility; or a foreign government or other foreign entity. Additionally, if the violator is not a citizen or national of the United States, and has been convicted of child abuse, the Department of Homeland Security may be able to move forward with removal proceedings against such an abuser under the Immigration and Nationality Act provisions rendering perpetrators of child abuse removable, such as 8 U.S.C. § 1227(a)(2)(E).

<b>Question#:</b>	15
<b>Topic:</b>	human smugglers
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** It is my understanding that Mexican transnational criminal organizations are becoming increasingly involved in these operations – by taxing human smugglers who assist migrants in crossing the border and/or using minors as drug mules to transport illicit substances.

How specifically will the inter-agency Unified Coordination Group that was just created to deal with the influx of unaccompanied minors entering the United States address the increasing involvement of Mexican transnational criminal organizations?

**Response:** The Unified Coordination Group (UCG) is working closely with stakeholders to address the full range of challenges involved in the current influx, including the involvement of transnational criminal organizations. In particular, the UCG is engaged with U.S. Immigration and Customs Enforcement (ICE), which is the Department of Homeland Security’s primary investigative arm with regard to transnational criminal organizations. Within ICE, Homeland Security Investigations (HSI) coordinates with U.S. Customs and Border Protection, Department of State, Department of Justice, foreign law enforcement and intelligence partners, and the Intelligence Community at large to attack human smuggling organizations (HSOs) by investigating, disrupting, and dismantling those criminal travel networks that present possible threats to U.S. national security or of humanitarian concern. In order to support and expand ICE’s current efforts to curb human smuggling in the southwest border, ICE has taken – and plans to take on – various operational, investigative, and intelligence initiatives, including Operation Torrent Divide and Operation Funnel Catch.

ICE initiated Operation Torrent Divide to counter and diminish the increased levels of organized criminal activity and of illicit migration taking place in the Rio Grande Valley area of Texas. ICE has deployed an additional 60 personnel to HSI’s Special Agents in Charge offices in San Antonio and Houston in order to reinforce their existing human smuggling investigative efforts. Additionally, ICE has provided intelligence, tactical, and operational support to these field offices in order to augment ongoing surge operations already underway. These operations will initially be geared to disrupting human smuggling organizations. The information derived from such operations will then be used to expand these cases into long-term investigations aimed at dismantling the networks and those associated with these activities both domestically and internationally.

Concurrently with Operation Torrent Divide, HSI is executing Operation Funnel Catch, a nationwide financial initiative to complement human smuggling investigations through proactive financial investigations. Operation Funnel Catch will target the money laundering trend known as “interstate funnel accounts.” This emerging trend provides an efficient and difficult to detect method for human smuggling organizations to move illicit

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<b>Topic:</b>	human smugglers
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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proceeds rapidly through the exploitation of financial institutions located within the interior of the United States to the states bordering the Republic of Mexico. These are accounts that are opened at large U.S. financial institutions by straw account holders in states that border Mexico and are used as funnels where cash moves through quickly with little or no leftover balance. Cash deposits made anonymously, usually by a friend or family member in destination states and then immediately withdrawn by the human smuggling organization in the source state, challenge the ability of law enforcement to seize any substantial amounts of illicit funds. Utilization of interstate funnel accounts by human smuggling organizations exploits the U.S. banking system, enables organizations to move money rapidly across great distances at minimal cost, and allows for anonymity of the depositors since the cash deposits are usually under the \$10,000 reporting limit.

Funnel Catch will enhance ICE's effectiveness to attack transnational criminal organizations engaged in illicit financial activity associated with human smuggling violations. ICE offices will effect seizure warrants and disrupt human smuggling financial networks by discovering straw accounts and intercepting their criminal proceeds.

The HSI Extraterritorial Criminal Travel Strike Force and Illicit Pathways Attack Strategy programs were designed to leverage the expertise of dedicated investigative, analytical, and prosecutorial resources to identify the most significant extraterritorial human smuggling organizations operating throughout the world that are involved in smuggling special interest aliens into the United States. Through aggressive investigation, all HSO members, including upper-echelon leadership, are targeted for arrest and prosecution, organizational vulnerabilities are identified, and assets are seized.

The ultimate goal of these programs and investigations is to dismantle criminal travel networks and human smuggling organizations that can or do facilitate the illicit movement of foreign nationals to the United States.

ICE has offices strategically situated in Central America to help these governments combat transnational organized crime (TOC) in the region, including offices in Guatemala, Honduras, El Salvador and Panama. These offices work collaboratively with their foreign law enforcement partners to jointly address the threats that transnational organized criminal organizations pose with regard to human and contraband smuggling. The law enforcement efforts in this region are further enhanced by the close partnerships ICE has developed through the establishment of Transnational Criminal Investigations Units (TCIUs) in all the aforementioned countries. The TCIUs are comprised of vetted and trained foreign law enforcement personnel who work with ICE to provide a proactive means of combating TOC threats.

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<b>Topic:</b>	human smugglers
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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ICE is complementing these and other initiatives with ICE resources abroad to better support Mexico and Central American countries with capacity building and enforcement operations, particularly Mexico's Southern Border region where most migrants from Central America are making their way into North America.

ICE is aggressively pursuing these and other initiatives as part of a whole of government approach to conducting comprehensive investigations that will result in significant disruption and dismantlement of organizations engaged in this activity, and ultimately erode their enabling networks.

<b>Question#:</b>	16
<b>Topic:</b>	The kidnapping of 276 young girls
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The kidnapping of 276 young girls in Nigeria by Boko Haram has shone a spotlight on the problem of international human trafficking. An article in a recent TIME Magazine demonstrates that these 276 girls are only the “tip of the iceberg.” The article cites the following statistics. I am astounded by the number of trafficking victims.

21-30 million people are in some sort of involuntary servitude — the highest number in history.

Victims from 136 different countries have been found in 118 other countries.

China, India, and Pakistan have the most slaves, but Mauritania and Haiti have a higher prevalence of slavery.

Sex trafficking represents from 22 to 58% of trafficking, depending on the report.

The profit margin on each woman trafficked is 70%.

From 2007 to 2010, 16% of the countries studied by the U.N.’s office of Drugs and Crime did not record a single conviction for any kind of trafficking.

What steps is DHS taking to combat human trafficking?

**Response:** DHS has created the Blue Campaign to coordinate and enhance the efforts of its various components to combat human trafficking. DHS uses a victim-centered approach to combat human trafficking, which places equal value on the identification and stabilization of victims and the investigation and prosecution of suspected traffickers. Victims are crucial to investigations and prosecutions. DHS can provide immigration benefits to non-citizen victims who do not have legal status in the United States. DHS can help victims through DHS victim assistance resources or can help connect victims to services in their community.

The Blue Campaign has created a suite of materials to raise public awareness and to educate the public about victim identification, case investigations, and resources available to victims. The materials may be ordered or downloaded and offer messages tailored to non-governmental and faith-based organizations, law enforcement officials, attorneys, judges, first responders, healthcare professionals, school officials and others.

The Blue Campaign has also created a public service announcement for television and radio entitled “Out of the Shadows,” which is designed to raise awareness and understanding concerning human trafficking within communities. The television public

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service announcement has aired approximately 5,000 times nationwide through donated airtime since being launched in mid-February 2014. The Blue Campaign has also placed human trafficking awareness posters nationwide at transportation hubs such as major airports and truck stops.

The Blue Campaign has continued to form private sector partnerships with companies such as Western Union and Amtrak, allowing for the training of their workforce to identify and report human trafficking. DHS has also partnered with government organizations such as the National Association of Counties and National League of Cities to deliver webinar training, share resources and co-brand materials for raising awareness through county and local governments. These partnerships also allow for the co-branding of Blue Campaign awareness materials such as posters and public service announcements, which are currently on display in Amtrak and Western Union facilities throughout the country.

The Blue Campaign assists in distributing a web-based interactive human trafficking training for law enforcement, available through the DHS Federal Law Enforcement Training Center. It also distributes two videos explaining to law enforcement authorities how immigration relief in the form of Continued Presence and T and U nonimmigrant status can be beneficial to their investigation. Each video is eight minutes in length and includes a subject matter expert panel.

DHS continues to mandate that all employees who are likely to encounter victims of human trafficking take specialized human trafficking training. DHS component agency TSA has adopted a policy that mandates its screening and law enforcement workforce complete this type of training annually. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) has created an Advanced Human Smuggling/Human Trafficking training course for its personnel. In collaboration with the Department of Justice and Department of Labor, DHS and ICE have also created an advanced human trafficking training course for the anti-trafficking coordination teams as well as for state and local task forces, including victim services providers.

ICE HSI is the lead agency within DHS for investigating human trafficking. In FY 2013 alone, ICE received 248 human trafficking tips to its 24-hour tip line, initiated 1,025 human trafficking investigations, attained 816 criminal convictions related to such trafficking, and seized assets worth more than \$1.8 million from those found guilty of those offenses. ICE HSI has designated 39 specially trained human trafficking subject matter experts – at least one in every Special Agent in Charge field office.

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To assist in the complicated needs of trafficking victims, the ICE HSI Victim Assistance Program has 26 full-time Victim Assistance Specialists in 24 of its local investigative offices and more than 250 Victim Assistance Coordinators. These professionals are responsible for assessing victims' needs for all victims linked to an HSI investigation, working to integrate victim assistance considerations at the beginning and throughout the duration of the criminal investigation. They ensure that potential human trafficking victims are rescued, transferred to safe locations, and provided with referrals for medical, mental health, and legal assistance, including for possible immigration benefits, case management, and other services.

In recognition of the needs and unique challenges of interviewing trafficked minors, as well as other child and special needs victims, ICE established a Forensic Interviewing Program. The four full-time Forensic Interview Specialists, when requested, conduct developmentally-appropriate, legally-defensible, victim- and culturally-sensitive forensic interviews for ICE human trafficking investigations, domestically and internationally. Interviews are conducted in English and Spanish, or in any other language through an interpreter.

DHS provides short-term immigration benefits in the form of Continued Presence, which benefits law enforcement by allowing a victim to remain in the U.S. during an investigation, as well as long-term immigration benefits in the form of T nonimmigrant status, for the victims of trafficking specifically, and U nonimmigrant status, for victims of certain qualifying crimes, including human trafficking. To be eligible for T nonimmigrant status, the victim must have complied with any reasonable request for assistance in the investigation or prosecution of the human trafficking (with exceptions for cases involving minor victims or victims who are unable to cooperate due to physical or psychological trauma), and must meet other requirements. To be eligible for U nonimmigrant status, the victim must have been, must be, or must be likely to be helpful to law enforcement in the investigation or prosecution of the crime, and must meet other requirements. Both T and U nonimmigrant status generally allow victims to remain in the United States for four years with work authorization, with the ability to seek adjustment of status to lawful permanent residence after three years; and allow victims to apply for derivative visas for certain qualifying family members. Over 5,000 T visas for principal applicants have been granted since 2002, and 10,000 U visas for principal applicants, the maximum number allowed by the authorizing statute, have been granted in each of the past five years.

USCIS conducts in-person and web-based trainings and presentations on combating human trafficking and on immigration relief options for victims. USCIS conducts webinar trainings on a bi-monthly basis for federal, state, and local law enforcement

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authorities focused on issues unique to law enforcement's role, rights, and responsibilities in providing a law enforcement certification for T nonimmigrant status applications and U nonimmigrant status petitions. These events explain and address questions related to the T and U nonimmigrant status programs, while also explaining the certification process in general.

USCIS and ICE Victim Assistance Program and Law Enforcement Parole Section has developed a comprehensive training module on Continued Presence, T and U nonimmigrant status, and DHS resources available to federal, state, and local law enforcement authorities.

The U.S. Customs and Border Protection Office of Public Affairs conducts a public awareness campaign aimed at children and their families from Guatemala, Honduras, and El Salvador. The campaign uses multiple formats (print, radio, television, and more) to promote awareness of the dangers posed to children, including human trafficking, in attempting to illegally immigrate to the United States.

CBP also works with the Department of Transportation on the Blue Lightning Initiative, which includes a training module and pocket guide that educates airline employees on how to identify human trafficking in airports or during flights and how to notify law enforcement. This voluntary, advanced reporting allows CBP to research and formulate an appropriate response, including coordination with other federal agencies as needed. Since its June 2013 launch, the Blue Lightning Initiative has expanded to five participating airlines.

DHS Center for Faith-based & Neighborhood Partnerships conducts outreach to faith-based communities and non-profit organizations. The outreach includes capacity-building initiatives and conducting training presentations during workshops and conferences. The Center distributes Blue Campaign materials customized to the specific needs and interests of faith-based and non-profit constituencies.

**Question:** What challenges do you face in seeking to investigate international trafficking rings, where jurisdictional issues arise?

**Response:** U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) serves as the lead agency within DHS for investigating human trafficking. ICE is committed to its Trafficking in Persons Strategy, which aims to

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aggressively target human traffickers globally through outreach, coordination, and coalition building.

- Outreach – Special Agents in Charge and Attachés conduct outreach and provide training to educate federal, state, local, and foreign law enforcement agencies and non-governmental organizations (NGOs) regarding available expertise in human trafficking investigations, the provision of Continued Presence as a means for short-term immigration benefits for victims of trafficking, and to establish channels for human trafficking leads. International outreach efforts focus on awareness and increasing the host governments’ efforts to combat human trafficking at potential source and transit countries. These efforts have resulted in outreach to more than 230,000 contacts on human trafficking.
- Coordination – Domestically, ICE coordinates and deconflicts human trafficking investigations as well as establishes protocols for information exchange.
- Coalition building – Internationally, ICE develops and builds on existing partnerships with foreign governments, law enforcement, and NGOs to form long-term strategic relationships that foster information exchange and collaboration in human trafficking cases.

Internationally, ICE, in coordination with its Attaché offices around the world, conducts capacity building training with foreign law enforcement, prosecutors, and victim service providers with the goal of the training to enhance both the United States and the host country’s ability to more effectively prevent human trafficking from occurring around the world. Since the program’s initiation in 2008, ICE has conducted 70 such training sessions around the world.

<b>Question#:</b>	17
<b>Topic:</b>	human trafficking cases
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Both the FBI and the Department of Homeland Security have jurisdiction over human trafficking cases. How does each agency ensure that you are not duplicating the other agency's work?

How do you work with state and local authorities to combat trafficking, if at all?

What steps does DHS take to identify victims of human trafficking that it comes across in its investigations?

Overall, do you have sufficient funding to investigate human trafficking? If you had more funding, could you perform more investigations?

**Response:** The Department of Homeland Security (DHS) and the Federal Bureau of Investigation share investigative authority over human trafficking. In cases of concurrent jurisdiction, both Department of Justice and DHS investigators coordinate activities to ensure that they do not duplicate one another's work. Such coordination and de-confliction take place across multiple levels as part of interagency task forces, intelligence fusion centers, regional working groups, and even informally between field personnel of each Department. For human trafficking investigations, the efforts of the Human Smuggling and Trafficking Center (HSTC) are particularly noteworthy for providing an inter-agency, all-source intelligence fusion platform for investigations involving human smuggling and human trafficking.

DHS also works with state and local law enforcement partners through regional task forces to combat trafficking within state jurisdictions. Standardized training efforts with state and local partners through such DHS components such as the Federal Law Enforcement Training Center provides opportunities to coordinate and train state and local partners. For example, the HSTC is conducting a pilot project with several state fusion centers to collaborate human trafficking intelligence development at state levels.

As law enforcement professionals, we are constantly aware of the need to identify victims of human trafficking encountered in investigations. Ongoing training and guidance to all DHS criminal investigatory personnel reinforce this imperative. Our Victim Assistance Program specializes in forensic interviewing of victims, which can help identify victims of trafficking encountered in the course of investigations.

While additional funding would certainly provide the Department with the capacity to pursue additional human trafficking investigations, we are committed to attaining the best investigative results possible within the current budget environment.

<b>Question#:</b>	18
<b>Topic:</b>	Humane Treatment of Immigrants
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As previously mentioned, Congress mandated the safe repatriation of children to their countries of origin. Unfortunately, I understand that due to the violence in Honduras, El Salvador, and Guatemala, as well as in Mexico, that mothers also have been coming to the U.S. with their children seeking protection.

What is DHS doing to provide basic minimums of care to these families while in detention?

**Response:** Until recently, U.S. Immigration and Customs Enforcement (ICE) had only one residential facility dedicated to providing for the care and custody of family units. However, due to the significant increase in the number of family units being apprehended along the southwest border, the U.S. Department of Homeland Security (DHS) has been working to expand its capacity to house these aliens.

As a result, now, in addition to the Berks County Residential Center ICE had in Leesport, Pennsylvania, ICE has established a temporary facility for family units on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico, and has modified the ICE Karnes Civil Detention Center in Texas for use as a family residential center. The establishment of the temporary facility at Artesia and the modified residential center in Karnes County will help ICE to increase its capacity to house and expedite the removal of family units in a manner that complies with federal law. In addition, ICE has been exploring possible additional locations to house family groups at existing facilities that are not currently in ICE's inventory and working with other Federal partners to construct a new family residential center in Texas, funding permitting.

Of note, DHS is ensuring that after apprehension, families are housed in residential facilities that adequately provide for their safety, security, medical, and educational needs as prescribed by ICE's Family Residential Standards. ICE ensures that family detention facilities operate in an open environment, which includes play rooms, social workers, regularly re-stocked refrigerators, classrooms with state-certified teachers, and bilingual teachers. Residents at these facilities are provided three meals per day and are given access to milk, juice, and snacks 24 hours a day. They are medically screened upon arrival by a licensed nursing staff that is on site 24 hours per day, seven days per week; they receive mental health screenings upon admission; and they are provided ongoing medical and mental health care, as needed. Residents are provided an opportunity for indoor and outdoor recreation, social and legal visitation, and specialized on-site cultural activities. As in all of its facilities, ICE provides residents with access to telephones and the services of a chaplain, who engages representatives of other denominations to provide

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additional religious services. ICE continues to improve its services at each of these facilities to ensure that the same level of services is available at all locations wherever possible. The OIG continues to evaluate the detention facilities and improve conditions related to food and sanitation in facilities.

**Question:** For families from non-contiguous countries of origin, what steps is DHS taking to ensure their safe repatriation to their country of origin?

**Response:** ICE works closely with foreign governments and non-governmental organizations to assure the safe and humane reintegration of family units into their home country. ICE promptly involves foreign ministry and consular officials in the planning and repatriation processing of family units to their countries of origin. ICE provides consular notification rights as soon as possible and communicates any exigent circumstances to the consular officer, as well as to receiving authorities to accommodate any special needs. ICE supports consular access to foreign nationals upon request, and also allows consular officials to chaperone repatriation flights upon request.

For some family units from non-contiguous countries of origin, ICE arranges for repatriation via charter flight or commercial air. In the case of a commercial air flight an ICE officer may meet such families at the airport to witness their departure.

Upon arrival in their home country, families are processed through repatriation reception centers where foreign governments and non-governmental organizations provide a multitude of services and assistance to the returnees. The services may range from currency exchange, medical consultation, providing a meal upon arrival, and providing transportation to the family's hometown.

**Question:** For those families from Mexico, I understand that many are returned to Mexico in the middle of the night, often to border cities in Mexico with high levels of criminal activity. Will DHS reconsider this practice, and if so, what alternatives exist to more safely repatriate those families to Mexico?

**Response:** ICE Enforcement and Removal Operations (ERO) and U.S. Customs and Border Protection (CBP) are engaged in a number of initiatives to ensure that Mexican nationals are removed safely and in coordination with Mexican government officials. Absent extenuating circumstances, ERO and CBP conduct removals along the border in accordance with local repatriation agreements, which specify the designated ports of entry (POEs) and the hours of operation during which Mexican nationals may be

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repatriated. Such removals are coordinated with the Government of Mexico to ensure the safety and well-being of its nationals or citizens.

For those individuals removed to the interior of Mexico through the Interior Repatriation Initiative, family units are processed through repatriation reception centers where Mexican government and non-governmental organizations provide a multitude of services and assistance to the aliens. The services range from medical consultation, providing a meal upon arrival, and providing transportation to the family's hometown.

ICE is currently engaged in initiatives such as the Repatriation Technical Working Group, Repatriation Strategy and Policy Executive Coordination Team and the Interior Repatriation Initiative, and coordinates local repatriation agreements, to ensure that Mexican nationals, including family units, are removed safely and in coordination with Mexican government officials. ERO continues to seek improvements to the repatriation process, including the potential renegotiation of Local Repatriation Agreements.

**Question:** There have been reports that many migrants are repatriated without being provided with their personal belongings, such as wallets, cell phones and identification. What steps can DHS take to change this practice?

**Response:** Pursuant to ICE's detention standards, ERO makes every effort to ensure that these individuals have their property and money returned to them prior to departure. Individuals may make use of the grievance process to declare any funds or personal property believed to be missing; upon receipt of such an inquiry, ICE will investigate the matter in an effort to identify whether any property that was inventoried has in fact not been returned to the individual(s).

CBP's Office of Field Operations has clear procedures established in both its Secure Detention Directive and Personal Property Directive regarding the inventory, accounting, storage, transfer, abandonment, and return of personal property of individuals placed into CBP custody. These procedures include the return of personal property when the person is allowed to withdraw an application for admission, or immediately ordered removed from the United States.

CBP's Office of the Border Patrol has clear procedures established in its Hold Rooms and Short Term Custody Policy stating that all personal belongings will be secured and subsequently returned to the individual upon transfer to another agency or repatriation.

<b>Question#:</b>	19
<b>Topic:</b>	drought and fire preparedness
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Secretary Johnson, California is facing a historic drought. For the first time in 15 years, 100% of California is in moderate to exceptional drought according to the U.S. Drought Monitor. The risks of a severe wildfire season threatening public safety and infrastructure is deeply concerning. It is my view that being prepared for the impacts of drought is critical. These include major wildfires, communities running out of drinking water, and unemployment which will certainly impact migrant and low income agricultural workers.

California's Department of Forestry & Fire Protection reports that since January 1, California has had 2,118 fires on state lands. The average for this period that California normally experiences is 1,255. Clearly, we are facing the risk of a serious fire season in California as we move into the warmer months. I am deeply concerned for California and the West during this year. Therefore I am interested in knowing how your Department is preparing to respond to the disaster conditions California is facing.

Secretary Johnson, what actions will the Federal Emergency Management Agency ("FEMA") be taking to ensure federal resources - such as Fire Management Assistance Grants - will be readily available to California when a major wildfire occurs?

FEMA just announced that there is an additional \$40 million in pre-disaster mitigation funding. To what extent will your Department work with California to fund projects to mitigate impacts from drought and wildfire, which are eligible for this funding but have traditionally been under-represented in grants your Department awards?

I continue to have concerns that the Stafford Act does not work well for drought disasters. As you know, drought is an eligible disaster mentioned in the law, but since the Stafford Act became law, 8 states - including California in 2009 - have sought a federal disaster declaration for drought, and all 8 states were denied. Mr. Secretary, will you be prepared to work with California if the disaster conditions get severe enough that the Governor requests a federal disaster declaration?

**Response:** While a drought is eligible for a major disaster declaration under the Stafford Act, such declarations have been rare because FEMA's disaster assistance programs are largely focused upon repairing physical damage to structures, which is rare in drought events. The most significant impact of severe drought is typically economic, as a result of agricultural losses. Other federal agencies, such as the U.S. Department of Agriculture generally have the more appropriate programs and expertise to deal with severe drought.

With respect to the wildfire threat created by severe drought, FEMA's primary vehicle for providing assistance for wildfires is the Fire Management Assistance Grant (FMAG)

<b>Question#:</b>	19
<b>Topic:</b>	drought and fire preparedness
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
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Program. The FMAG Program provides grant funding to state, local, and Indian tribal governments for mitigation, management, and control of fires burning on publicly or privately owned forest or grasslands which threaten such destruction as would constitute a major disaster. Eligible activities may include associated emergency work and fire management assistance. FMAG declarations operate on a 24-hour real-time basis, and FEMA stands ready to provide assistance to the State of California when a fire or fire complex threatens such destruction as would constitute a major disaster.

FEMA also administers mitigation programs which could be utilized by state, tribal and local governments to reduce wildfire risk. The Hazard Mitigation Grant Program (HMGP) provides funds to states, territories, Indian Tribal governments, local governments, and eligible private non-profits (PNPs) following a Presidential major disaster declaration. The Pre-Disaster Mitigation (PDM) Program, subject to the availability of appropriations, provides funds annually to states, territories, Indian Tribal governments, and local governments. For FY 14 PDM Program, each state receives a set-aside of \$250,000 for their highest priority applications. Eligible applicants can submit up to 10 applications, not more than 2 of which can be project applications. The remainder must be planning grant applications. Eligible projects are selected by FEMA according to the business rules posted with the Funding Opportunity Announcement. PDM is a competitive grant program, and all projects outside the initial set-aside must compete nationally for funding. FEMA received applications for over three times the available funding in previous years. When the additional \$40 million was identified, we elected to apply it toward the anticipated over-submittals for FY 2014 PDM funds. This will allow FEMA to award funding for additional projects without extending the application period or revise business rules after the application period had opened.

Over the past several years, three PDM and one HMGP wildfire mitigation projects have been submitted within the State of California. FEMA continues to work with the State of California and local applicants to finalize the necessary environmental reviews to award funds to these projects.

<b>Question#:</b>	20
<b>Topic:</b>	Maritime Cargo Containers
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As you may know, section 1701 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires that all maritime cargo containers entering the United States be scanned by nonintrusive imaging and radiation detection equipment operating at foreign ports by July 1, 2012. It is my understanding that while this requirement exists, the Department is still testing technologies capable of providing this essential capability for homeland security. California ports receive about 40% of the nation's inbound cargo traffic, with the majority of these containers arriving at ports in regions identified as high-risk Tier I Urban Areas under the Urban Area Security Initiative. This includes the Port of Los Angeles and the Port of Long Beach in Southern California and the Port of San Francisco and Port of Oakland in Northern California.

Given the importance of securing our ports from nuclear materials, I would appreciate the Department's urgent attention to assessing technologies with the capability to scan containers and vehicles accurately for nuclear and radiological material.

What progress has the Department made in developing passive imaging systems that could meet the statutory requirements of 100% scanning of inbound maritime cargo at foreign ports?

**Response:** The Department of Homeland Security (DHS) is reviewing efforts to implement the 100 percent scanning mandate, including identifying obstacles to implementation and potential paths to achieving the goal. As Secretary Johnson stated in his May 5, 2014 letter to Congress extending the implementation deadline by two years, the Department has found that the conditions and supporting evidence cited in the 2012 deadline extension continue to prevail and preclude full scale implementation of the provision at this time. That letter noted that, in particular, systems to scan containers would have a significant and negative impact on trade capacity and the flow of cargo and cannot be purchased, deployed, or operated at ports overseas because ports do not have the physical characteristics to install such systems. However, DHS has met with numerous vendors over the last year to assess current and emerging technology that could efficiently and effectively scan cargo, in particular transshipped cargo. In addition to ongoing monitoring of technology, DNDO initiated its Nuclear and Radiological Imaging Platform (NRIP) project in 2012 in an effort to characterize the ability of emerging technologies to detect radiological and nuclear materials, while clearing benign conveyances, regardless of shielding or cargo clutter levels. Three vendors were competitively awarded contracts for the NRIP project. DNDO also is funding over ten basic and applied research projects that involve less mature technologies to address the challenge of detecting shielded nuclear material. In addition to these activities focused on passive systems, DHS' Science and Technology Directorate and CBP continue to assess the capabilities of active Non-Intrusive Inspection (NII) systems. These systems

<b>Question#:</b>	20
<b>Topic:</b>	Maritime Cargo Containers
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

provide an image of the container's contents and help officers identify anomalies or other indicators that would trigger additional scrutiny. DHS remains committed to exploring next generation capabilities that could support ongoing efforts to address the 100% scanning law.

<b>Question#:</b>	21
<b>Topic:</b>	border tunnels
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Dianne Feinstein
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** It is my understanding that the Sinaloa cartel, formerly headed by Joaquin “El Chapo” Guzman, is responsible for the vast majority of illegal cross border tunnels, both in California and across the Southwest border as a whole. Two bills which I authored were signed into law in 2006 and 2012 to provide law enforcement with additional tools to investigate illegal tunnel activity and prosecute those responsible. With the passage of these measures, and through close collaboration with trusted partners in Mexico, it is my hope that we can successfully combat tunneling operations at the Southwest border.

Given the arrest of El Chapo Guzman, how do you see the illegal border tunnel threat evolving?

**Response:** U.S. Customs and Border Protection (CBP) does not expect the illegal border tunnel threat to change given the arrest of El Chapo Guzman. Mexican Transnational Criminal Organizations (TCOs) will continue to use tunnels to transport illegal narcotics into the United States to circumvent law enforcement.

Increased resources and effectiveness of our enforcement efforts at and between the ports of entry are likely to continue to push illicit border activity underground. The dynamics of illicit cross-border activities over the next decade may change as threats converge, new threats emerge, and criminal actors adapt to our enforcement actions at the border. Accordingly, our focus is on enhancing our capabilities and ensuring that we have tools that will lead to increased subterranean domain awareness, and increasing the probability of illicit tunnel detection, interdiction, and resolution.

**Question:** Will his arrest disrupt the Sinaloa Cartel’s tunneling operations, particularly in the greater San Diego-Tijuana area?

**Response:** The arrest of Chapo Guzman will have minimal impact on the Sinaloa Cartel’s tunneling operations. Mexican TCOs, and specifically the Sinaloa Cartel, will likely continue to exploit the greater San Diego-Tijuana area in order to employ this highly effective method of smuggling.

Increased resources and effectiveness of our enforcement efforts at and between the ports of entry are likely to continue to push illicit border activity underground. The dynamics of illicit cross-border activities over the next decade may change as threats converge, new threats emerge, and criminal actors adapt to our enforcement actions at the border. Accordingly, our focus is on enhancing our capabilities and ensuring that we have tools

<b>Question#:</b>	21
<b>Topic:</b>	border tunnels
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<b>Committee:</b>	JUDICIARY (SENATE)

that will lead to increased subterranean domain awareness, and increasing the probability of illicit tunnel detection, interdiction, and resolution.

**Question:** Do you feel that law enforcement now has the tools it needs to fully address the problem of cross-border smuggling tunnels?

**Response:** The U.S. Department of Homeland Security (DHS) continues to invest significant resources to improve the department's ability to fully address the cross-border tunnel threat. The CBP Office of Border Patrol, the CBP Office of Laboratory and Scientific Services, the CBP Office of Technology, Innovation, and Acquisition, and DHS's Science and Technology Directorate are partnering to 1) identify commercially available off-the-shelf technologies and 2) develop new technology to detect illicit cross-border tunnels while under construction or while in use. This includes working closely with other federal agencies with experience and expertise in the area of tunnel detection and tunnel exploitation (e.g., Defense Intelligence Agency, National Geospatial Intelligence Agency, Defense Threat Reduction Agency, and Combating Terrorism Technical Support Office Technical Support Working Group).

<b>Question#:</b>	22
<b>Topic:</b>	Tucson Sector
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Jeff Flake
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As I am sure you are aware, with apprehensions in excess of 300,000 for most years since 2000, the Tucson Sector was the busiest border patrol sector on the southern border. I am certain you can appreciate the frustration of Arizonans when they learned that this administration has been this transferring and then purposely releasing illegal aliens from the Rio Grande Valley in Texas into Arizona.

To your knowledge, were illegal aliens shipped into Texas or California for processing or detention when the Yuma sector in Arizona was being overrun and the Tucson Sector was setting annual records for apprehensions year after year?

**Response:** CBP has routinely transferred detainees from one facility to another to prevent overcrowding and to disrupt smuggling cycles, and it has transferred detainees from its facilities in Arizona to neighboring states and Texas for these reasons.

**Question:** Prior to utilizing the processing capacity available in the Tucson Sector, did you investigate whether existing state and local facilities were available in Texas?

**Response:** The U.S. Border Patrol carefully considered all existing options for expanding hold room capacity, including facilities in and near the South Texas area. However, due to the significant numbers we were experiencing at the time, the unique requirements of unaccompanied children, and our need to be able to co-locate several agencies to respond to this population, the Nogales Processing Center was the most viable option.

<b>Question#:</b>	23
<b>Topic:</b>	UACs in the Tucson Sector
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Jeff Flake
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** It is my understanding that the facility in Nogales is believed to have the capacity for holding 1,500 unaccompanied alien children. It is also my understanding that there are plans for the Nogales facility to be at maximum capacity shortly.

How long can we expect unaccompanied children to be flown into the Tucson Sector from the Rio Grande Valley?

**Response:** The Department of Homeland Security (DHS) is working to build additional capacity to process unaccompanied children entering at the Rio Grande Valley. Meanwhile, the Department of Defense (DoD) has provided space at Lackland Air Force Base in Texas for the Department of Health and Human Services (HHS) to house the children before HHS can place them. DoD is also providing facilities at Fort Sill, Oklahoma and Ventura, California for the same purpose. DHS, its Federal Emergency Management Agency, and HHS are working to continue to identify additional facilities to house and process the influx of children. DHS is also working in tandem with HHS to expedite processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children.

**Question:** How many personnel deployed in the Tucson Sector are currently involved in dealing with unaccompanied children in the Nogales facility?

**Response:** Currently, a total of 121 Border Patrol Agents, 15 U.S. Customs and Border Protection (CBP) Officers, and 22 U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations Agents are detailed to the Nogales Placement Center. Seventy of these Border Patrol Agents have been detailed from stations within the Tucson Sector.

**Question:** What additional resources have been deployed to the Tucson Sector to deal with the additional duties associated with managing the unaccompanied children detention?

**Response:** Through a coordinated effort, the Federal Emergency Management Agency (FEMA), CBP, and other agencies, many resources were deployed to assist with the duties of managing the detention of UAC.

<b>Question#:</b>	23
<b>Topic:</b>	UACs in the Tucson Sector
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Jeff Flake
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Can you assure Arizona residents, unequivocally, that the administration's actions of flying illegal aliens from Texas into the state of Arizona have not reduced one millimeter of border security in the Tucson or Yuma sectors?

**Response:** To ensure border security is maintained throughout the Arizona corridor, the Joint Field Command, which has command and control of assets in the corridor, deploys resources to mitigate imminent and emerging threats, moving assets to fill gaps and eliminate vulnerabilities. The transfer of immigrants between Border Patrol sectors occurs on a regular basis to allow CBP to manage flows and processing capability.

**Question:** At any point in this response have officers been removed from the line due to the arrival of unaccompanied children in the Tucson sector?

**Response:** The Tucson Sector continues to maintain a sufficient balance of personnel to provide coverage along the International Border. Personnel requirements at the Nogales Placement Center have been met by shifting resources from other areas – supplemented through the effective use of overtime funding to ensure that line operations are not left vulnerable.

**Question:** The Tucson Sector has the capacity to process illegal aliens as a direct result of the sector's history of record setting apprehensions and illegal crossings. What is being done to increase the capacity of the Texas border patrol sectors to enable them to process the apprehensions there?

**Response:** CBP is currently conducting Operation Trifecta, by which additional personnel throughout the nation are deployed to the Rio Grande Valley Sector (South Texas), as well as identifying large capacity holding facilities to support and augment resources already in place.

With respect to unaccompanied children, DHS is working to build additional capacity to process unaccompanied children entering at the Rio Grande Valley. Meanwhile, DoD has provided space at Lackland Air Force Base in Texas for HHS to house the children before HHS can place them. DoD is also providing facilities at Fort Sill, Oklahoma and Ventura, California for the same purpose. DHS, FEMA, and HHS are working to

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<b>Primary:</b>	The Honorable Jeff Flake
<b>Committee:</b>	JUDICIARY (SENATE)

continue to identify additional facilities to house and process the influx of children. DHS is also working in tandem with HHS to ensure efficient processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children.

DHS is also building additional detention capacity for adults traveling with children who cross the border illegally in the Rio Grande Valley. For this purpose, DHS is establishing a temporary facility for adults with children on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico. The establishment of this temporary facility will allow ICE to increase its capacity to house and expedite the removal of adults with children in a manner that complies with federal law. Artesia is one of several facilities that DHS will rely on to increase our capacity to hold and process the removal of the increasing number of adults with children illegally crossing the southwest border.

<b>Question#:</b>	24
<b>Topic:</b>	Handling of UACs
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Jeff Flake
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** It is my understanding that more than 47,000 unaccompanied children have been apprehended so far this year. I also understand that in round numbers DHS is currently holding 3,000 and Health and Human Services currently has nearly 7,000 in custody and has been releasing or discharging an average of 255 per day in recent weeks.

While the placement of unaccompanied children falls to the Department of Health and Human Services, are you aware of efforts to ensure that these children are not placed back with individuals that were actively involved in their illegal entry into the country?

I believe that HHS seeks to place unaccompanied children who have entered the country illegally in the least restrictive status that is in their best interest. As the head of the agency charged with ensuring we have secure borders, have you considered how this undermines your mission?

**Response:** While the Department of Health and Human Services (HHS) is solely responsible for the placement of unaccompanied children in its custody with sponsors, U.S. Immigration and Customs Enforcement (ICE) is the lead U.S. law enforcement agency responsible for fighting human smuggling and we are engaged in increased activities to disrupt and dismantle the human smuggling organizations that lure these individuals into the dangerous journey from Central America. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires, subject to certain qualifications including safety and suitability assessments, that HHS place children in its custody in the least restrictive setting that is in the best interest of the child. We otherwise defer to HHS with respect to its authorities, protocols, and policies.

<b>Question#:</b>	25
<b>Topic:</b>	GSA
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Al Franken
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The General Services Administration and Immigration Services recently decided to move Minnesota's immigration field office to a location that is largely inaccessible to public transportation, in violation of federal guidelines.

Will GSA and Immigration Services halt construction on this facility?

**Response:** On May 1, 2014, GSA and USCIS participated in a stakeholder discussion regarding concerns about the proposed Bloomington facility. Shortly after the engagement, GSA placed a temporary hold on further construction on that building until such time that they were able to review and reevaluate options.

**Question:** My understanding is that Immigration and Customs Enforcement is vacating an office near the current Immigration Services field office. Could the field office move to the vacating ICE facility?

**Response:** Immigration and Customs Enforcement (ICE) is vacating space that is in the same building as the current USCIS facility. While USCIS can work with GSA to occupy some of the space that ICE is vacating, the lease for that facility expires in 2017 so it would be a short-term solution to USCIS space needs. It is USCIS' experience that a typical time period from market survey to occupancy of a space takes up to 2-2 ½ years. Therefore, it would still be necessary that USCIS work with GSA to solicit for new space that would be occupied at the expiration of the current lease. USCIS is having ongoing discussions with GSA about this strategy as an option to provide USCIS with an opportunity for interim growth while awaiting a new market survey should that be the ultimate direction.

**Question:** Is there another federal government tenant that could occupy the building at the new location?

**Response:** It is my understanding that GSA is researching this possibility with other federal entities.

<b>Question#:</b>	26
<b>Topic:</b>	BOSS
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Al Franken
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** DHS is developing a facial recognition program, called the Biometric Optical Surveillance System (BOSS), which raises serious privacy concerns. This program reportedly began in the military and was transferred to DHS several years ago as a potential tool for law enforcement to identify faces in large crowds. Although the BOSS program is still in development, DHS tested the system at a public hockey game in Washington State last year. This program could be beneficial, but it's easy to see how such a system could be used at peaceful political rallies or protests. I am concerned that facial recognition systems are being deployed without adequate oversight or privacy protections.

The FBI is also developing a facial recognition system. When I held a hearing on this system in 2012, the FBI told me they only collect facial images—or “faceprints”—from known criminals. It appears that BOSS has bigger ambitions. DHS says Customs and Border Protection has collected faceprints at border crossings. And according to documents released last year under a Freedom of Information Act request, DHS also wants to collect faceprints at airports from passengers enrolled in the Global Entry program.

What is the status of the BOSS program?

What privacy safeguards have you put in place to ensure that this program protects privacy and doesn't stifle free speech?

Are there any limits to whose faceprints can be collected under this program?

Do you share faceprints with the FBI or other law enforcement entities?

**Response:** The Biometric Optical Surveillance System (BOSS) was a United States Special Operations Command congressionally-funded 3D face recognition program transferred to the Department of Homeland Security's (DHS) Science and Technology Directorate (S&T) in June, 2010. S&T funded Electronic Warfare Associates, Inc. (EWA) to perform research and develop BOSS. S&T also funded Pacific Northwest National Laboratories to run independent testing of BOSS using only test volunteers (not the public). A Privacy Impact Assessment (DHS/S&T STIDP/PIA-008(b)) was signed December, 2012 and was active at the time of testing to safeguard the test volunteers. All test data was destroyed and not shared outside of S&T. Through this testing, it was determined that BOSS was not ready for operational deployment to DHS end users. No further funding was applied to the BOSS program.

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<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Al Franken
<b>Committee:</b>	JUDICIARY (SENATE)

The BOSS Privacy Impact Assessment is available at  
[http://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy\\_pia\\_st\\_stidpboss\\_dec2012.pdf](http://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy_pia_st_stidpboss_dec2012.pdf)

<b>Question#:</b>	27
<b>Topic:</b>	reduced staffing
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Al Franken
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Last spring, the Transportation Security Administration reduced staffing at the Minneapolis-St. Paul Airport, creating significant congestion at checkpoints. The situation became so bad that airport officials told all passengers to arrive at least 2.5 hours before their flights. A TSA spokesperson blamed across-the-board budget cuts at airports nationwide, and said they “offset” the congestion by increasing the number of passengers selected for expedited screening through the Pre-Check program.

Does TSA have sufficient resources not only to protect our nation’s airports, but to keep them functioning smoothly?

**Response:** TSA allocates staffing based on a goal of screening passengers in 10 minutes or less, and the agency constantly strives to effectively utilize its resources to protect our nation’s airports while simultaneously providing a smooth screening experience for passengers.

Minneapolis-St. Paul (MSP) airport officials’ guidance to passengers to arrive 2.5 hours before flights was due to a multitude of factors, including a shortage of parking at Terminal 1, a space-constrained airline ticketing/check-in lobby, and several similarly space-constrained security checkpoints. TSA’s reduction in staffing at MSP, as at other airports, was due to more efficient operations and did not occur at the cost of passengers’ time or security.

**Question:** Do you think sending more passengers through expedited Pre-Check screening is a safe way to deal with checkpoint congestion?

**Response:** Risk-based approaches, such as TSA Pre✓™, enable TSA to better focus resources on those passengers who could pose the greatest risk — including those on terrorist watch lists — while providing expedited screening to travelers TSA has assessed as low risk. The goal of our intelligence-driven, risk-based approach is to provide the most effective security in the most efficient manner. TSA is confident that while the implementation of TSA Pre✓™ is resulting in improved efficiency, it is not resulting in decreased security.

<b>Question#:</b>	28
<b>Topic:</b>	Deferred Action for Childhood Arrivals
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On June 5, 2014, the Department announced the process for individuals to renew their status or initially apply under the Deferred Action for Childhood Arrivals (DACA) program. The documents published by the Department, specifically the Frequently Asked Questions (FAQ), prove that the agency is loosening the education requirements and is not routinely verifying documentation provided by applicants.

What is the agency doing to prevent fraud and abuse by applicants who may use a diploma mill to substantiate their education?

**Response:** U.S. Citizenship and Immigration Services (USCIS) is dedicated to the prevention of fraud and safeguarding the integrity of our legal immigration system. If there is a DACA request which appears to include documents that may not be legitimate, USCIS further investigates the validity of the document. Moreover, if an individual knowingly misrepresents or fails to disclose facts in an attempt to receive DACA, the individual will be treated as an immigration enforcement priority to the fullest extent permitted by law, and will be subject to criminal prosecution and/or possible removal from the United States. While a diploma may be used to meet the educational requirements for deferred action, evidence of education is only part of the requested documentation, which also includes proof of identity, age, immigration status on June 15, 2012, continuous residence since 2007, or military service. DACA requestors must also pass a comprehensive background check and appear in person for biometric services. In addition, the decision whether to grant DACA to an individual is entirely discretionary.

**Question:** How many DACA applications have been denied or terminated because of evidence that contradicts an applicant's education background?

**Response:** USCIS tracks the numbers of all DACA approvals, denials, and terminations. USCIS does not track the specific reason a DACA request is denied or terminated. For additional data on requests for consideration of DACA, please see: <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

<b>Question#:</b>	28
<b>Topic:</b>	Deferred Action for Childhood Arrivals
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<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Why doesn't the Department routinely verify data or evidence provided by applicants but instead tell applicants that they may do it (see FAQ21)?

**Response:** USCIS administers a large number of immigration programs. In order to detect fraud in these programs, USCIS provides training to all Immigration Services Officers (ISOs) at several points in their careers. Fraud detection training is provided during BASIC training. This training is updated and augmented through required formal fraud detection training that is required for all USCIS officers. It is not necessary for USCIS to produce specific training products for every program that it administers. There are fraud indicators that are common to all applications and requests. While not providing an exhaustive list of these indicators, some of the most common are evidence of "white out" on photocopies, font discrepancies on original or copied documents, inconsistencies in dates/addresses/names/experiences/entries/departures/etc. between documents and forms, and "evidence" of events that were not possible on the dates/times claimed. It is not necessary that officers be familiar with how or where documents are produced to employ these common fraud indicators—it is necessary for them to be aware of the potential for alterations, inconsistencies, and implausible situations.

For DACA in particular, USCIS has employed the same techniques as described above since the inception of the program. In the most recent round of DACA FAQs, USCIS added a new FAQ (#21) specifically on this point as a deterrent factor to put DACA requestors on notice that USCIS can and does conduct independent investigations to authenticate documents when appropriate. When ISOs detect any suspect documents, they refer the matter to the Fraud Detection and National Security Directorate where further vetting of the document's authenticity occurs. This further vetting may include verification of information contained in the document against online public or government information, contacting the educational institution, the Better Business Bureau or the state government where the institution is located.

**Question:** Please provide the definition of an "alternative" education program, as stated in FAQ33, and why this was included?

**Response:** An alternative school or program addresses the needs of students that typically cannot be met in a regular school program, such as a current individualized program (IEP), as required by the Individuals with Disabilities Education Act, for a student with disability. We continue to work collaboratively with the Department of Education on this issue, and, as with all programs, are continually evaluating whether this and other areas need additional guidance for our recipients and adjudicators.

<b>Question#:</b>	28
<b>Topic:</b>	Deferred Action for Childhood Arrivals
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Please explain how adjudicators will assess whether an education program, including literacy or English as a Second Language program, will be assessed as “effective”?

**Response:** In assessing the “demonstrated effectiveness” of certain educational programs, adjudicators are tasked with considering the following:

- The duration of the program’s existence;
- The program’s track record in assisting students in obtaining a regular high school diploma, GED, or a recognized equivalent certificate, or passing a GED or recognized equivalent exam;
- Receipt of awards or special achievement or recognition, that indicate the program’s overall quality; and/or
- Any other relevant information indicating the program’s overall quality.

This, and additional information, is further detailed in DACA FAQ #33.

**Question:** Please provide any guidance that adjudicators are receiving about the education requirements.

**Response:** Guidance on the DACA educational guideline is provided to all Service Center personnel performing adjudicative review of DACA cases. Understanding that we always continue to build and improve on our DACA training materials, such materials include, but are not limited to:

- DACA FAQs (<http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>)
- DACA Standard Operating Procedures (SOP) (“Chapter 8: Adjudication of the DACA Request., Section C: Determining if Guidelines are Met.”)
- Training Materials (such as audio-visuals presentations, collaborative training sessions, and practice cases)
- Internal DACA FAQs (Covering “Graduation from University/College,” “In School vs. Graduated from School,” and “In School at the Time of Filing, but not at the Time of Adjudication.”)

<b>Question#:</b>	28
<b>Topic:</b>	Deferred Action for Childhood Arrivals
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Are there discussions taking place within the Department or within the White House to expand the DACA program? If so, how?

**Response:** The Administration has encouraged the Congress to pass the broader and urgently needed Comprehensive Immigration Reform bill. The Department and the Administration stand ready to support and work with the Congress on meaningful reform.

<b>Question#:</b>	29
<b>Topic:</b>	Release of Criminal Aliens
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 2013, U.S. Immigration and Customs Enforcement (ICE) released from its custody 36,007 individuals who had been convicted of a crime and were awaiting the outcome of deportation proceedings. According to ICE, “In some of the releases . . . , ICE was required by law to release the individuals from custody, pursuant to decisions by the Supreme Court and other courts.” However, it appears that the vast majority of the 36,007 releases were not so required. In fact, “Only a small share of these criminal aliens (fewer than 3,000) were released in accordance with a 2001 Supreme Court decision, *Zadvydas v. Davis*.”

The *Zadvydas* decision prohibits the indefinite detention of aliens who have been ordered removed from the U.S. Specifically, the *Zadvydas* Court held that once an alien has been ordered removed, detaining that alien beyond six months is presumptively unreasonable. Significantly, the Court held that this presumption can be rebutted if a “significant likelihood of removal in the reasonably foreseeable future” can be shown.

Of the 36,007 individuals released from ICE custody in 2013, 116 individuals had been convicted of a total of 193 homicides. On May 12, 2014, ICE reportedly claimed that court decisions and orders accounted for the release of individuals convicted of 75% percent of these homicides. Two days later, ICE revised that figure to 72%. So, by its own admission, ICE voluntarily released convicted criminals who accounted for the remaining 28% even though it had the discretion to detain them and keep them off the streets.

Such a serious breach of public safety requires accountability and answers for the American people.

A. For each homicide convict whose release in 2013 was “mandatory,” please provide the name of the judge and court of jurisdiction that ordered the release.

B. If there was no court order, please explain how the release can properly be called “mandatory” rather than discretionary.

C. If your answers to Question (A) or (B) relies on the 6-month rule announced by the *Zadvydas* Court, please explain how each release can be called “mandatory” in light of the following language from the *Zadvydas* decision:

After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing . . . . This 6–month presumption, of course, does not mean that every alien not removed must be released

<b>Question#:</b>	29
<b>Topic:</b>	Release of Criminal Aliens
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Specifically, for each homicide convict whose release in 2013 was “mandatory”:

Please explain in detail the steps ICE took to rebut the 6-month presumption prior to the “mandatory” release. If no steps were taken, please explain why not.

Please explain the basis for ICE’s ultimate determination that there was no significant likelihood of removal in the reasonably foreseeable future.

Please indicate whether DHS asked the State Department to leverage its visa sanction authority against the country which refused to take back the alien in question. If not, please explain why not.

**Response:** As indicated in U.S. Immigration and Customs Enforcement’s (ICE’s) August 15, 2014 response to your letter to Secretary Johnson dated June 9, 2014, ICE released 36,007 criminal aliens from ICE custody. ICE had no discretion over the releases of many of these individuals. In general, the various types of releases from custody include bond, order of recognizance, order of supervision, alternatives to detention, and parole.

Individuals released from ICE custody at ICE’s discretion were released either due to eligibility for bond (pursuant to Section 236 of the *Immigration and Nationality Act*) or for reasons such as deteriorated health or advanced age. In cases where the decision to release an alien from ICE custody is not based on discretion, an alien may be released pursuant to a Federal court order or due to the U.S. Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In response to your inquiry regarding the names of the judges and courts of jurisdiction that ordered the releases, ICE does not keep records of this information.

Ensuring that our enforcement policies and procedures are best suited to protect national security and public safety is paramount. To make certain that we are doing everything we can in this regard, DHS is instituting new procedures requiring that an appropriate senior-level supervisor must approve before ICE releases potentially dangerous individuals.

Furthermore, release may be mandatory under *Zadvydas* if the alien is subject to a final order of removal but is either stateless and no country will accept the alien, or the alien’s

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country of nationality refuses to issue a travel document and no third country will accept the alien. Under such circumstances and where the presumptive six month period has elapsed, ICE generally must release an alien if it determines that there is no significant likelihood of removal in the reasonably foreseeable future, irrespective of the alien's criminal background. However, there are limited exceptions for continued post-order detention where the alien is specially dangerous or where the alien's release would present a significant threat to national security or a significant risk of terrorism.

<b>Question#:</b>	30
<b>Topic:</b>	criminal aliens released
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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**Question:** For each discretionary release, please explain why the convicted criminal alien in question was released.

For each homicide convict released, please indicate what conditions were imposed upon the release in order to protect public safety. If none, then please explain why precautionary conditions were not imposed.

For each homicide convict released, please provide:

- the immigration status of the convict;
- the zip code of the convict's last known address; and
- the name and location of the detention facility from which the convict was released.

**Response:** As indicated in U.S. Immigration and Customs Enforcement's (ICE) August 15, 2014 response to your letter to Secretary Johnson dated June 9, 2014, of the 169 ICE detainees with a homicide-related conviction who were released from ICE custody in FY 2013, 131 have been issued a final order of removal. Of the remaining 38 aliens who have not been issued a final order of removal, one was granted voluntary departure by an immigration judge and subsequently departed within the permitted timeframe. Further, 154 of the 169 were released pursuant to court order or due to *Zadvydas*.

ICE system records indicate the following zip codes as those associated with the detainees:

10006	10027	10304	10453	10455	10456
10463	10474	11213	11214	11236	11385
11429	11433	13205	16146	18103	19142
21117	22304	22312	27707	28174	28212
28215	30045	30093	30126	30263	30303
30337	30340	32305	32765	33010	33012
33018	33028	33032	33034	33055	33125
33128	33133	33162	33169	33172	33173
33351	33406	33444	33463	33467	33712
34114	40203	43222	44070	48340	50320
51106	53218	55125	55408	55443	56001

<b>Question#:</b>	30
<b>Topic:</b>	criminal aliens released
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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56201	60544	62794	70065	70816	73844
77072	77078	77433	77450	85007	85326
85730	87121	89506	90005	90013	90019
90032	90044	90057	90211	90255	90731
91020	91201	91205	91334	91335	91506
91606	91709	91733	91744	91766	91767
91768	91770	92057	92084	92301	92562
92614	92683	92804	92835	92840	92880
93030	93206	93701	94112	94509	94544
94608	95112	95116	95132	95205	95670
95823	95824	96145	97024	97266	98168
99502	99507				

The following list includes ICE facilities that served as the location of final book-out for criminal aliens with homicide-related convictions who were placed in a non-custodial setting in fiscal year 2013, according to data generated from ICE system records. Thus, while aliens may have been in multiple facilities while in ICE custody, this list comprises the final locations of the aliens immediately prior to release. As such, this list is inclusive of locations that are not utilized for the long-term housing of aliens (e.g., hold rooms).

- Alabama
  - Etowah County Jail
- Arizona
  - Eloy Federal Contract Facility
  - Florence Service Processing Center
  - Florence Staging Facility
  - Tucson INS Hold Room
- California
  - Adelanto Correctional Facility
  - California City Correctional Center
  - El Centro Service Processing Center
  - Fresno Hold Room
  - Los Angeles Custody Case
  - Sacramento County Jail

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- Sacramento Hold
  - San Bernardino Hold Room
  - San Diego Contract Detention Facility - CCA
  - Santa Ana DRO Hold Room
  - SFR Hold Room
- Colorado
  - Denver Contract Detention Facility
- Florida
  - Baker County Sheriff's Office
  - Columbia Kendal Hospital
  - Glades County Detention Center
  - Krome North Service Processing Center
  - Monroe County Detention Center
  - Tampa Hold Room
  - Wakulla County Jail
- Georgia
  - North Georgia Detention Center
  - Stewart Detention Center
  - Atlanta District Hold Room
- Illinois
  - INS Airport Hold
- Kansas
  - Rice County Detention Center
- Louisiana
  - South Louisiana Detention Center
- Massachusetts
  - Plymouth County Correctional Facility
  - Suffolk County House of Corrections
- Maryland
  - Howard County Detention Center

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- Michigan
  - Calhoun County Correctional Center
- Minnesota
  - Freeborn County Adult Detention Center
  - Sherburne County Jail
- North Carolina
  - Charlotte Hold Room
- New Jersey
  - Bergen County Jail
  - Essex County Jail
  - Hudson County Correctional Center
  - NEW/INS OS Hold Room
- New York
  - Buffalo (Batavia) Service Processing Center
  - NYC Field Office
  - Orange County Jail
- Ohio
  - Butler County Jail
- Oklahoma
  - Tulsa County Jail
- Oregon
  - Portland District Office
- Pennsylvania
  - York County Prison
- Texas
  - Dallas Field Office Hold Room
  - El Paso Service Processing Center
  - Houston Contract Detention Facility

<b>Question#:</b>	30
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- South Texas Detention Complex
- Virginia
  - Washington Field Office
- Washington
  - Northwest Detention Center
  - Seattle Field Office Hold Room
- Wisconsin
  - Kenosha County Detention Center

<b>Question#:</b>	31
<b>Topic:</b>	Zadvydas Decision
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, we discussed the 2001 U.S. Supreme Court decision in *Zadvydas v. Davis*. I asked if you would support legislation that narrows the impact of that decision and allows the government to hold criminal aliens longer than six months. You said, "Senator, it's my understanding that the case concerns a construction of the Constitution so I don't know whether a legislative fix is appropriate, but I think looking at legislation is worthwhile. When I read the case I was struck by the fact that there might be room for greater space in the exception for detaining people who are true threats to public safety. So, I'm interested in having our lawyers be sure we're interpreting it properly and I'd be willing to think about legislation."

We also discussed whether you had any plans to recommend to Secretary of State John Kerry to deny visas to those countries that refuse to cooperate and have not accepted their citizens back. In the case of Guayana, following the denial of visas, they accepted 115 out of the 116 citizens that the United States wanted to deport. This is clearly an effective tool that is not being utilized by the administration.

Please provide me with an update of the Department's review of legislative options to the fix *Zadvydas* decision.

Please provide me with an update of the Department's review of their interpretation of the *Zadvydas* decision, especially in regards to the possibility of detaining those aliens who are 'true threats to public safety' longer than six months.

In the hearing, you stated that you were discussing with your staff whether denying visas to recalcitrant countries is a tool that should be utilized more often. Please notify me in writing when you and your staff reach a decision on this matter.

Please also provide me with data and the reasons why these recalcitrant countries won't take their citizens back.

**Response:** The Department of Homeland Security (DHS) continues to review the viability of legislation to address the consequences on DHS operations resulting from the decision of the U.S. Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). DHS continues to review the viability of efforts to increase detention authority consistent with this decision.

As the Committee is aware, in April 2011, in an effort to improve interagency efforts to address the issue of countries that delay or refuse the return of their nationals, U.S. Immigration and Customs Enforcement (ICE) and the Department of State's (DoS) Bureau of Consular Affairs signed a Memorandum of Understanding (MOU) establishing

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mechanisms by which DoS and DHS could work together to ensure that other countries accept the return of their nationals in accordance with international law. The MOU established the following steps in attempts to gain compliance for countries that systematically refuse or delay repatriation of their nationals:

- Issue a demarche or series of demarches at increasingly higher levels;
- Hold joint meetings with the Ambassador to the United States, the Assistant Secretary for Consular Affairs, and the Director of ICE;
- Provide notice of the U.S. Government's intent to formally determine the country is not accepting the return of its nationals, and that the U.S. Government intends to exercise visa sanctions under section 243(d) of the Immigration and Nationality Act (INA) to gain compliance;
- Consider visa sanctions under section 243(d) of the INA; and
- Call for an inter-agency meeting to pursue withholding of aid or other funding.

The imposition of visa sanctions under section 243(d) of the INA is a significant step with potentially serious implications. DHS continues to deliberate whether and when the exercise of such authority would be appropriate and beneficial to U.S. interests.

Although the majority of the countries in the world adhere to their international obligation to accept the timely return of their citizens, ICE has confronted unique challenges with those countries that are uncooperative in repatriating their citizens.

Despite ICE's continued efforts, a number of factors constrain ICE's ability to improve the level of repatriations to those nations, including limited diplomatic relations with some countries; the countries' own internal bureaucratic processes, and foreign governments who do not view repatriation as a priority.

ICE is developing a standardized framework to designate countries as uncooperative with U.S. repatriation efforts and to prioritize those nations in the context of agency priorities. Through this analysis, which includes the number of criminal aliens from a particular country with a final order of removal, ICE will consider the distinct circumstances of each country and prioritize its responses to those countries presenting the most significant burdens.

Some progress has been made, and we are working to continue in our efforts in this regard. The U.S. Government will continue to engage all nations who deny or

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unreasonably delay the acceptance of their nationals, as we seek to achieve the ultimate goal of effecting the timely repatriation of all aliens subject to final orders of removal.

<b>Question#:</b>	32
<b>Topic:</b>	Reduction in Detention Beds
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The law currently requires ICE to maintain 34,000 detention beds daily. The President's budget called for a reduction in detention beds, asking for only enough to detain 30,500 on a daily basis.

In light of the outrageous situation in which 36,000 criminal aliens have been released, do you agree with the President's budget request to reduce the funding for detention beds? Please explain the rationale if you agree with the budget request to reduce detention bed space.

**Response:** The President's budget funds 30,539 detention beds. This avoids approximately \$185 million in detention and removal costs for non-mandatory and low-priority aliens who may be placed on alternatives to detention (ATD) while allowing U.S. Immigration and Customs Enforcement (ICE) to detain priority aliens.

ICE continues to implement efficiencies that assist with identifying, detaining, and removing those individuals who are enforcement priorities, while exercising discretion appropriately. Examples of this include implementing nationwide the risk classification assessment (RCA), a pilot program in which ICE works with the Executive Office for Immigration Review to expedite priority cases that are not subject to detention, and further expansion of ATD.

The President's budget provides a \$2 million increase for ATD, which is an important part of our enforcement efforts. Detention and ATD, however, are only part of the overall enforcement strategy. Thus, the Department of Homeland Security continues to work with the Department of Justice to increase immigration court efficiencies to ensure removal hearings are completed efficiently.

<b>Question#:</b>	33
<b>Topic:</b>	EB-5 visa program
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I have been told, and internal reports suggest, that the EB-5 visa program is being used to facilitate terrorist travel, economic espionage, money laundering, and investment fraud. The Inspector General said that the program cannot be managed effectively, and that there is some question about the economic benefit it provides.

In 2012, the Department's Office of Intelligence and Analysis completed a classified analysis of the EB-5 Immigrant Investor Program. On November 1, Senator Coburn and I asked for this report. When will you give us access to it?

**Response:** The Department has provided the document to Senate security.

**Question:** Has DHS ever conducted any sample file reviews or in-depth audits to estimate the fraud level in the EB-5 program—for example, through a Benefits Fraud & Compliance Assessment? If so, what were the results? If not, why not?

**Response:** While not a Benefit Fraud and Compliance Assessment (BFCA), in late 2012 the California Service Center performed an assessment of the EB-5 background and security checks. The review found that the regime of security checks that was in place at the time was essential to ensuring the integrity of the program. The review further found that enhanced security checks with the Federal Bureau of Investigation (FBI), the Department of the Treasury Financial Crimes Enforcement Network (FinCEN), and other government agencies might open lines of inquiry relevant to the eligibility of individuals seeking EB-5 benefits. These findings helped shape the design and operations of the newly formed Fraud Detection and National Security EB-5 (FDNS EB-5) office.

**Question:** What percentage of I-924 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?

**Response:** The Homeland Security Investigations (HSI), Forensic Laboratory (FL) provides a broad range of forensic, intelligence and investigative support to ICE, DHS and many other U.S. and foreign law enforcement agencies. Personnel from the HSI FL routinely provide training to USCIS officers at the training facility in Dallas and at other locations on request.

The HSI FL is dedicated to the examination of travel and identity documents. The majority of the documents accompanying an I-924 application are business-related

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documents, such as business plans and economic analysis reports, rather than original travel and identity documents that would be appropriate for forensic examination, and for this reason, applications are not routinely referred for forensic document analysis.

To enhance its ability to detect fraudulent travel and identity documents, however, the FDNS EB-5 office has arranged for the HSI FL to provide training to the Immigrant Investor Program Office (IPO) on detecting fraudulent documents, including training on document examination and document fraud. The lab's focus is on identity documents and civil documents as these documents have some level of standardization and contain physical security features that are intended to assist with their verification. The class will focus on basic counterfeiting and discuss what may be identified from a physical examination of documentary evidence as opposed to source verification of the documentation. The training will also cover methods on detecting alterations in any document. This training will aid in the detection of altered documents of any type.

USCIS/FDNS/EB-5 routinely refers cases to HSI, SEC, FBI, Department of State and other entities for investigation based upon the nature of the activity to be investigated. FDNS has a formal Request to Investigate process in place with HSI. This process requires that referrals be sent to the appropriate regional HSI Benefit Fraud Unit (BFU). When a Request to Investigate is accepted by the regional office, the BFU then assigns it to the appropriate HSI office to conduct the investigation.

**Question:** What percentage of I-526 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?

**Response:** Original travel and identity documents appropriate for ICE examination are not submitted with the I-526 petition. Some of the documents that accompany a typical I-526 petition include: business-related documents, such as business plans and economic analyses; documents that establish a petitioner's source of funds; and a Targeted Employment Area letter from a state government.

**Question:** What percentage of I-829 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?

**Response:** Adjudication of the I-829 involves the review and verification of business-related documents such as invoices, receipts, bank statements, tax returns, contracts,

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business licenses, payroll and personnel documents, and other evidence. Because FL expertise is in identity and travel-related documents, it would be extremely rare for USCIS to refer I-829 supporting documents to that facility. Rather, USCIS will work with external organizations, such as other U.S. government agencies, as it reviews information submitted in support of an I-829.

**Question:** I understand the USCIS director occasionally receives updates on the number of pending security concerns for all cases (not just EB-5). For each quarter from the beginning of 2011 through the present, please list the number of pending security concerns under examination, the number that were newly received in that quarter, and the number that remained after security concerns were closed through the quarter.

**Response:** The table below provides the USCIS national security monthly and quarterly workload for the period beginning October 2010 and continuing through Q2 2014. During the life cycle of the system that tracks this information several major changes were made to the manner in which the national security related data was recorded, as reflected in the chart below. In April 2011, USCIS began to focus on the subjects of the applications and petitions. From April 2011 through the end of Q2, 2014 (March 31, 2014), the figures represent the number of national security concerns measured by subjects.

The number of cases preliminarily identified as national security concerns is a fluid number. This is because such matters are worked initially by specially trained immigration professionals who review these applications or petitions and move quickly to communicate with the various law enforcement and national security agencies who have declared an interest in the matter. Thus, increases of agency filing volumes will bring an increase in the number of initially reported matters which require national security “deconfliction” with the law enforcement and Intelligence Communities.

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Period	Data Type	Known or Suspected Terrorist (KST) and Non-KST workload FY 2011 <sup>1</sup>					Total Forms Received by USCIS <sup>2</sup>
		Begin Pending	Received <sup>3</sup>	Closed <sup>4</sup>	Adjusted <sup>5</sup>	End Pending	
2010-Oct	Receipts	4,856	949	153	-692	4,960	434,007
2010-Nov	Receipts	4,960	759	787	-337	4,595	476,159
2010-Dec	Receipts	4,595	873	514	-324	4,630	369,397
2011-Jan	Receipts	4,630	728	363	-475	4,520	382,268
2011-Feb	Receipts	4,520	503	164	778	5,637	376,226
2011-Mar	Receipts	5,637	644	381	-524	5,376	517,907
2011-Apr	Subjects	5,413	129	685	0	4,857	474,626
2011-May	Subjects	4,857	319	409	-28	4,739	465,893
2011-Jun	Subjects	4,739	551	906	13	4,397	528,391
2011-Jul	Subjects	4,397	401	1,073	92	3,817	451,491
2011-Aug	Subjects	3,824	445	512	-1	3,756	505,471
2011-Sep	Subjects	3,756	388	406	4	3,742	431,266
2012-Q1	Subjects	3,743	1,252	1,933	2	3,064	1,346,373
2012-Q2	Subjects	3,064	1,554	1,627	-1	2,990	1,908,891
2012-Q3	Subjects	2,990	1,589	2,116	-55	2,408	1,520,676
2012-Q4	Subjects	2,408	1,624	1,741	131	2,422	1,531,517
2013-Q1	Subjects	2,422	1,418	1,224	4	2,620	1,718,599
2013-Q2	Subjects	2,620	1,543	1,890	61	2,334	1,491,897
2013-Q3	Subjects	2,334	1,546	1,499	6	2,387	1,911,506
2013-Q4	Subjects	2,387	1,979	1,782	18	2,602	1,751,331
2014-Q1	Subjects	2,602	1,488	1,553	-13	2,524	1,319,035
2014-Q2	Subjects	2,524	1,523	1,315	-2	2,730	1,480,048

<sup>1</sup> Reports were monthly until FY 2012.

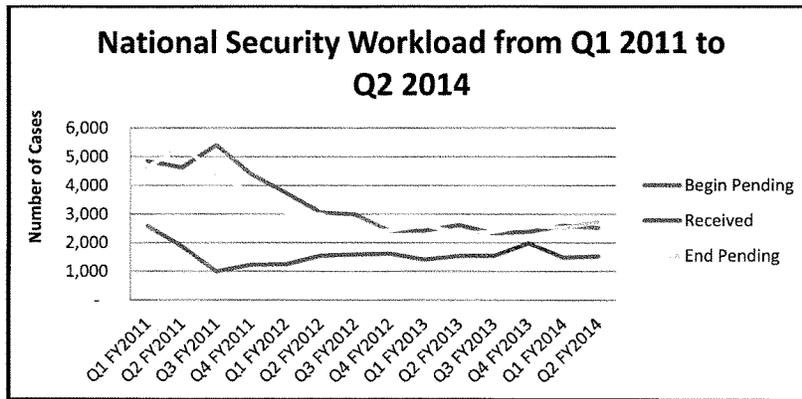
<sup>2</sup> Data from Performance Analysis System (PAS). Provided by Office of Performance and Quality (OPQ)

<sup>3</sup> From Oct 2010-April 2011, information on all received National Security (NS) Concerns is not available. Concerns that were Non-NS at the time the report was run but were initiated as KST or Non-KST were not included in these reports.

<sup>4</sup> For receipt data, closed concerns are forms that were either approved or denied. For subject data, closed concerns includes concerns with a status of closed and KSTs or Non-KSTs that became Non-NS.

<sup>5</sup> Includes cases where the case type was improperly recorded and then fixed, cases were deleted for improper entry, or cases were merged with pre-existing cases.

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<b>Question#:</b>	34
<b>Topic:</b>	FDNS
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Fraud Detection and National Security, under direction of U.S. Citizenship and Immigration Services, has conducted Benefits Fraud and Compliance Assessments in the past.

Please provide a list of programs that have been the subject of such an assessment.

**Response:** USCIS Benefit Program BFCAs:

- I-360 Religious Worker
- Form I-90 Replacement of lost, stolen and destroyed Forms I-551
- I-140, Immigrant Petition for Alien Worker), Employment based BFA final report (EW3 & E31)
- H-1B
- I-130 Marriage Based Petitions
- I-130 Family Based Petitions for Yemeni Nationals
- I-589 Asylum
- I-129 L-1A Intra Company Transfer

**Question:** Are there other programs slated to be assessed by FDNS?

**Response:** The BFCAs program was reconstituted in the USCIS Office of Policy and Strategy (OP&S) in FY11. OP&S evaluated past study methodologies to identify deficiencies and future improvements. OP&S continues to develop refined methodologies to assess fraud in immigration benefit types. For example, OP&S is currently conducting an exploratory study on marriage-based immigration benefit fraud detection. The study is investigating the methods, tools, and decision-making rules Immigration Service Officers and FDNS Immigration Officers use to detect different types of fraud. This study will complement prior BFCAs methodologies and, along with additional internal agency analysis, help USCIS to augment its ability to more accurately measure fraud within certain benefit categories and thus bolster its anti-fraud initiatives.

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**Question:** If so, please describe their projected workload and completion dates. If not, why not?

**Response:** In FY15, the exploratory study on marriage-based immigration benefit fraud detection will conclude. Also in FY15, USCIS OP&S will begin design work for a new pilot BFCA for marriage-based immigration benefits. These initiatives will help serve as a basis for a more comprehensive, ongoing agency benefit fraud assessment effort.

<b>Question#:</b>	35
<b>Topic:</b>	Hands Off List
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On February 3, 2014, I wrote you asking about some internal DHS emails I received which raised some disturbing questions about DHS policies regarding admitting individuals with potential ties to terrorism into the United States. The May 2012 email chain between ICE personnel stated: "The NTC Watch Commander advised that the subject has sued CBP twice in the past and that he's one of the several hands off passengers nationwide. . . . Apparently his records were removed in December 2010 and the DHS Secretary was involved in the matter." I have previously disclosed the identity of the individual in question to the Department.

What is the current watchlist status of this individual?

**Response:** As directed by Homeland Security Presidential Directive 6 (Integration and Use of Screening Information), the Terrorist Screening Center (TSC) has combined the 12 previously existing terrorist watchlists and created the United States government's single consolidated Terrorist Screening Data Base (TSDB). The TSDB is maintained by the Terrorist Screening Center (TSC), which was created by the Attorney General and is administered by the Federal Bureau of Investigation. Every day, the TSC provides updated information on known and suspected terrorists to screeners and law enforcement personnel. In addition, TSC makes the final decision on whether a person meets the minimum requirements for inclusion into the TSDB. Therefore, all questions related to the terrorist watchlist status of an individual should be referred to the U.S. Department of Justice for response.

**Question:** Why was this individual removed from the watchlist in December 2010?

**Response:** As directed by Homeland Security Presidential Directive 6 (Integration and Use of Screening Information), the Terrorist Screening Center (TSC) has combined the 12 previously existing terrorist watchlists and created the United States government's single consolidated Terrorist Screening Data Base (TSDB). The TSDB is maintained by the TSC, which was created by the Attorney General and is administered by the Federal Bureau of Investigation. Every day, the TSC provides updated information on known and suspected terrorists to screeners and law enforcement personnel. In addition, TSC makes the final decision on whether a person meets the minimum requirements for inclusion into the TSDB. Therefore, all questions related to terrorist watchlist status of an individual should be referred to the U.S. Department of Justice for response.

<b>Question#:</b>	35
<b>Topic:</b>	Hands Off List
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Was Secretary Napolitano involved in the matter?

If so, please describe the nature, extent, and reasons for the involvement of the DHS Secretary or her staff in the removal of the individual from the watchlist.

**Response:** To the best of our knowledge, Secretary Napolitano was not involved in the matter.

**Question:** What role would the Secretary typically play in removing someone from the terrorist watchlist?

**Response:** The Department of Homeland Security (DHS) has a role in coordinating with the National Counterterrorism Center and the TSC to nominate, review, and/or recommend the removal or status change of persons designated for the U.S. Government's consolidated watchlist for terrorism screening information. These determinations are based on the authorities of DHS nominating, screening, and vetting agencies, and on the totality of information identified during the nomination, encounter, review, and redress processes established in accordance with the U.S. Government Watchlisting Guidance. The TSC maintains an on-going process to review every record in the watchlist to ensure that it is thorough, accurate, and current. If the TSC determines that the watchlisting standards are not met for an individual record, TSC will remove the record in coordination with the nominating agency. The TSC is the final arbiter of whether terrorist identifiers are removed from the watchlist.

**Question:** I understand that on June 7, 2010, CBP issued a memo stating that "CBP personnel are not permitted to independently create terrorist related lookouts for known or suspected terrorists in any CBP screening database. Additionally, the remarks section of any TECS lookout created by CBP personnel may not include references to terrorism or extremism." Was the removal of this individual's information connected in any way with the issues discussed in this CBP memo?

**Response:** As directed by Homeland Security Presidential Directive (HSPD) 6 (regarding the Integration and Use of Screening Information), the Terrorist Screening Center (TSC) has combined the 12 previously existing terrorist watchlists and created the United States government's single consolidated Terrorist Screening Data Base (TSDB). The TSDB is maintained by the TSC, which was created by the Attorney General and is administered

<b>Question#:</b>	35
<b>Topic:</b>	Hands Off List
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by the Federal Bureau of Investigation. Every day, the TSC provides updated information on known and suspected terrorists to screeners and law enforcement personnel. In addition, TSC makes the final decision on whether a person meets the minimum requirements for inclusion into the TSDB. Therefore, all questions related to the terrorist watchlist status of an individual should be referred to the U.S. Department of Justice for response.

**Question:** What prompted the need to “reemphasize and expand” this policy in June 2010 with the issuance of this memo?

**Response:** HSPD-6 and other relevant HSPDs established a consolidated U.S. Government terrorist watchlist maintained by the TSC. CBP issued the 2010 memo to remind personnel that CBP may nominate individuals to the terrorist watchlist and that the terrorist watchlist is maintained by the TSC. CBP’s policy ensures that information regarding known or suspected terrorists is being properly submitted for possible inclusion on the TSDB and to ensure that CBP does not create its own terrorist watchlist.

**Question:** I understand that the June 2010 memo was preceded by a 2007 CBP memo. Please provide a copy of this memo.

**Response:** The 2007 CBP memo and June 2010 memo provided consistent guidance to the field regarding nominating individuals to the Terrorist Screening Database (TSDB), in compliance with HSPD 6.

**Question:** If a CBP officer obtains valuable information regarding extremist ties but does not have enough information to make a nomination to the Terrorist Screening Center, why would CBP object to that information being included in the remarks section of a TECS lookout?

**Response:** CBP officers are expected to create lookouts when, for example, there is information available of any possible violation of the laws enforced by CBP and to provide a description of the possible violation. Prior to 9/11, various agencies were using their own terrorist watchlists and information was not being consistently shared among the agencies. Where information was shared, it was not supported by common

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<b>Topic:</b>	Hands Off List
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technological infrastructures because individual agencies developed and implemented interfaces with other federal agency watch lists systems on an ad hoc basis. The situation was further complicated by a lack of policies and procedures to govern the sharing, and there was no way of ensuring that consistent data was on each agency's watchlist. HSPD 6 and other relevant HSPDs attempted to remedy that situation by creating a consolidated U.S. government terrorist watchlist to ensure information regarding known and suspected terrorists was being shared consistently among the relevant agencies. CBP's policy ensures that information about known or suspected terrorists is being properly submitted for possible inclusion on the terrorist watch list and to ensure that CBP does not create its own terrorist watchlist, thus repeating the previously identified problem.

**Question:** What is CBP's statutory authority for giving such guidance?

**Response:** CBP has many authorities related to their mission at the border (e.g., 8 U.S.C. §§ 1103, 1182, 1225, 1357; 19 U.S.C. 482, 1461, 1467, 1496, 1499, 1581, and 1582). CBP issued guidance to ensure compliance with HSPD-6 and other relevant HSPDs.

**Question:** Does CBP have regulations that address this issue? If so, what are they, and what is the authority for issuing the regulations? If not, why not?

**Response:** CBP has many authorities related to their mission at the border (e.g., 8 C.F.R. Parts 103, 235, 287; 19 C.F.R. Parts 122, 123, 148, 162). CBP issued guidance to ensure compliance with HSPD-6 and other relevant HSPDs.

**Question:** How many terrorist-related lookouts for known or suspected terrorists were removed from any CBP screening database as a result of the June 2010 CBP memo?

**Response:** No known or suspected terrorist lookouts were removed as a result of the memo.

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<b>Topic:</b>	Hands Off List
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
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**Question:** How many terrorist-related lookouts for known or suspected terrorists were removed from any CBP screening database as a result of the 2007 CBP memo?

**Response:** No known or suspected terrorist lookouts were removed as a result of the memo.

<b>Question#:</b>	36
<b>Topic:</b>	Interviews of Individuals at the Border
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, many members discussed an internal summary prepared by agents in the field concerning the recent surge of unaccompanied children. The document, while it does not have any author or official seal, was apparently done to summarize interviews of individuals crossing the border along the McAllen, Rio Grande City and Weslaco stations. Interviews were done by intelligence analysts and border patrol agents. The main task, it says, was “to determine the factors compelling the OTMs (other than Mexicans) to migrate to the U.S.” 230 subjects were interviewed from several countries.

When asked why they chose this time to migrate, an overwhelming majority said it was to take advantage of the “new” U.S. law that grants a “free pass” to unaccompanied children and female adults traveling with minors. These “free passes” refer to a Notice To Appear document, saying they are issued and then released on their own recognizance pending a hearing. Specifically, it states, “A high percentage of the subjects interviewed stated their family members in the U.S. urged them to travel immediately, because the United States Government was only issuing immigration “free passes” until the end of June 2014.” The document states that “the issue of permisos” was the main reason provided by 95% (+/-) of the interviewed subjects.

Are agents in the field instructed to do such interviews?

If so, do they report to headquarters?

**Response:** DHS officers and agents screen unaccompanied children to determine if they have been a victim of trafficking or have a fear of persecution if they are returned to their home country. DHS is required to complete this screening within 48 hours of determining the child is unaccompanied. As part of this screening, agents and officers will conduct interviews of such children however these interviews are intended to identify related protections concerns.

In response to the current influx of unaccompanied children coming to the southwest border, DHS is stressing that Deferred Action for Childhood Arrivals (DACA) does not apply to children who arrive now or in the future in the United States, and that to be considered for DACA, individuals must have continually resided in the United States since June 2007. Secretary Johnson has personally issued an open letter to the parents of those who are sending their children from Central America to the United States, to be distributed broadly in Spanish and English, to highlight the dangers of the journey, and to emphasize there are no free passes at the other end. We are also making clear that the “earned path to citizenship” contemplated by the Senate bill passed last year would, if

<b>Question#:</b>	36
<b>Topic:</b>	Interviews of Individuals at the Border
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<b>Committee:</b>	JUDICIARY (SENATE)

enacted in the present form, not apply to individuals who cross the border now or in the future; only to those who have been in the country for the last two and a half years.

**Question:** Please provide any memos or summaries of these interviews to the committee.

**Response:**

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[The FOUO/LES response has been sent separately.]

FOR OFFICIAL USE ONLY/LAW ENFORCEMENT SENSITIVE

<b>Question#:</b>	37
<b>Topic:</b>	Martinez v. Holder
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Petitioner Martinez, a former MS-13 gang member from El Salvador, argued during removal proceedings that based on the threat to his life at the hands of that gang, he should be eligible for what is known as “withholding of removal” pursuant to 8 U.S.C. § 1231(b)(3). The Fourth Circuit’s decision in *Holder v. Martinez* suggests that his status as a former gang member might be a “protected ground” entitling him to remain in the country instead of being removed. As a result of this decision, even members of the most violent and dangerous gangs may simply renounce their membership as a ruse to remain here.

Do you believe that individuals who are former gang members should be entitled to withholding of removal due to those ties, as *Holder v. Martinez* allows?

If not, what do you believe should be done about this decision? Did you urge that it should be appealed? Would you support any action to overturn it, including legislation if necessary?

**Response:** Generally, a basic matter, the Department of Homeland Security (DHS) agrees with those tribunals, such as the First Circuit, the Ninth Circuit, and the Board of Immigration Appeals, which have ruled that the protected ground of “membership in a particular social group” should not be predicated on criminal acts or associations. See *Arteaga v. Mukasey*, 511 F.3d 940, 945-46 (9th Cir. 2007); *Matter of E-A-G-*, 24 I&N Dec. 591, 595-596 (BIA 2008); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 215 n.5 (BIA 2014) (citing *Arteaga* and *E-A-G-*) and *Cantarero v. Holder*, 734 F.3d 82 (1st Cir. 2013) (concluding that the BIA’s view on this issue was reasonable and expressly disagreeing with the Sixth and Seventh Circuit cases cited below).

The Fourth Circuit is not the only circuit to suggest that former gang membership might qualify an applicant for asylum or statutory withholding of removal based on the protected ground of membership in a “particular social group.” See *Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010); *Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009). But rather than address this important issue in piecemeal fashion, cabined by the facts of individual cases like *Martinez*, DHS believes that the rulemaking process represents the best method to build a more comprehensive framework for the adjudication of particular social group cases, including those tied to gang membership. To that end, we continue to work with our partners at the Department of Justice to fashion a regulation that will help ensure appropriate analysis of all asylum and withholding claims.

<b>Question#:</b>	38
<b>Topic:</b>	DHS Drone Operations I
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** U.S. Customs and Border Protection (CBP) employs a fleet of ten modified Predator B unmanned aerial vehicles (UAVs), and has ordered another fourteen, to augment its capabilities to patrol America's borders.

Does DHS have any plan or intention to arm its drones with any type of weapons, even non-lethal ones?

**Response:** U.S. Customs and Border Protection's (CBP) Office of Air and Marine (OAM) currently operates nine MQ-9 unmanned aircraft system (UAS) aircraft from four sites across the country. During a January 28, 2014, Southern California maritime border security mission, the tenth aircraft was ditched in the Pacific Ocean when a faulty generator rendered the aircraft unable to safely return to land. The manufacturer has since corrected the failed component and a redundant capability is now installed on all CBP UAS operated beyond 45 minutes of a landing site. CBP has not planned nor been funded for the procurement of any additional UAS aircraft. No weapons have ever been carried on a CBP UAS, and there are no plans to arm CBP UAS.

**Question:** Do you believe DHS has the authority to do so?

**Response:** As noted, no weapons have ever been carried on a CBP UAS and there are no plans to arm CBP UAS. Accordingly, this is not a legal authority that CBP OAM has explored.

<b>Question#:</b>	39
<b>Topic:</b>	DHS Drone Operations 2
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** According to one media report, DHS has lent the use of its drones to other federal, state and local law enforcement agencies nearly 700 times in three years. In one reported instance, DHS provided the use of a drone to a local sheriff to investigate the conduct of a farmer in North Dakota who had allegedly stole his neighbor's cattle and engaged in an armed standoff with police.

Does DHS have any formal guidelines or regulations that limit the use of its drones to situations where there is a specific federal interest? If not, do you think it should?

**Response:** U.S. Customs and Border Protection (CBP) does not loan unmanned aircraft system (UAS) to other agencies; CBP UAS are operated by CBP Office of Air and Marine (OAM) pilots, and in some circumstances, U.S. Coast Guard pilots. While no CBP UAS been flown by an agency outside DHS, CBP does fly missions in support of other law enforcement agencies.

CBP's annual appropriations have consistently included provision of UAS support to other federal, state, and local law enforcement agencies. The Consolidated Appropriations Act of 2014, Pub. L. No. 113-76 (2014), provides for "the interdiction of narcotics and other goods; the provision of support to Federal, State, and local agencies in the enforcement or administration of laws enforced by the Department of Homeland Security; and at the discretion of the Secretary of Homeland Security, the provision of assistance to Federal, State, and local agencies in other law enforcement and emergency humanitarian efforts...." Additionally, OAM policy requires that CBP UAS operations are flown in support of authorized DHS/CBP border and homeland security missions, for training purposes, or when flying a mission in support of another federal, state, or local agency.

OAM personnel only conduct CBP UAS operations in support of authorized DHS/CBP border and homeland security missions, for training purposes, or when flying a mission in support of another federal, state or local agency. The North Dakota incident cited in your question was supported due to the repeated armed threats to law enforcement officers at that location. CBP's support to state and local agencies (which includes both law enforcement and humanitarian response efforts) accounts for a small portion of UAS flight operations.

<b>Question#:</b>	40
<b>Topic:</b>	DHS Drone Operations 3
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Department of Justice Inspector General recently recommended that the FBI develop privacy guidelines for its use of drones, given the unique Fourth Amendment concerns they present.

Especially since DHS's drones are apparently being used in the interior of the country, and not merely to patrol the border, do you think DHS should also develop privacy guidelines for its drones?

**Response:** The Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) published a Privacy Impact Assessment (PIA) for Aircraft Systems on September 9, 2013. This document addresses the privacy guidelines for the operation of all CBP aircraft (including unmanned aircraft system) and the sensor, image, and data collection technology employed by those aircraft during operation in any of the mission contexts for which CBP assigns its aircraft to operate. To the extent that a new CBP mission is assigned or an existing mission is modified beyond the context discussed in the current PIA, CBP and DHS have stated in the PIA that the document will be updated to review and analyze the privacy implications of any changes to technology or mission operation.

DHS published the Robotic Aircraft for Public Safety Privacy Impact Assessment (PIA) on November 16, 2012. The program tests and evaluates Small Unmanned Aircraft Systems (SUAS) for potential use by first responders and law enforcement in scenarios such as wildfire response, hazardous materials disaster management, crime scene situational awareness, and law enforcement tactical operations support. Privacy protections were built into the program to minimize the collection and use of personal information from project participants and members of the public.

The Robotic Aircraft for Public Safety PIA was the first PIA in the world to be published addressing the use of unmanned aircraft. Up until that time, no other government or private organization had published an unmanned aircraft PIA. The PIA reflects DHS's efforts to provide transparency to the public about its unmanned aircraft activities, and explains how privacy protections are built into the program.

The Robotic Aircraft for Public Safety PIA is available at:  
[https://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy\\_pia\\_st\\_raps\\_no\\_v2012.pdf](https://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy_pia_st_raps_no_v2012.pdf)

The DHS Privacy Office uses a number of existing tools provided by statute, Departmental directive, or policy guidance to identify privacy risks in DHS programs, and mechanisms for mitigating or managing those risks. These tools include the Privacy

<b>Question#:</b>	40
<b>Topic:</b>	DHS Drone Operations 3
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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Act of 1974<sup>6</sup> (Privacy Act), the Electronic Government Act of 2002<sup>7</sup> (e-Government Act), the Homeland Security Act of 2002, as amended<sup>8</sup> (Homeland Security Act); universally recognized Fair Information Practice Principles<sup>9</sup>; and relevant DHS guidelines<sup>10</sup> and Policy Memoranda.<sup>11</sup> Together, these authorities and policies, along with the Constitution, govern the collection, use, sharing, and retention of personally identifiable information by the Department. When considered as a whole, these tools provide privacy “guidance” for DHS use of unmanned aircraft systems just as they do for any other system or program operated by DHS. The source or platform DHS uses to obtain personally identifiable information is not relevant. Thus, if CBP were to obtain personally identifiable information through the sensor on an unmanned aircraft, that information would be treated no differently under the Fair Information Practice Principles, Privacy Act, or e-Government Act than information provided in an online or “hard” form, say, in connection with an application for immigration or other benefits.

Out of an abundance of caution, and concern that the privacy toolbox could not address all civil rights and civil liberties questions related to DHS use of unmanned aircraft systems, DHS established the Privacy, Civil Rights and Civil Liberties Working Group on Unmanned Aircraft Systems in September 2012. The Working Group is charged with advising the Secretary on policies and procedures needed to ensure that protections for privacy, civil rights, and civil liberties are designed and integrated into DHS and DHS-funded unmanned aircraft systems programs both current and forthcoming. This Working Group drafted a paper recommending privacy, civil rights, and civil liberties best practices, based on the lessons learned from CBP’s operation of unmanned aircraft systems over the years. The paper is currently at the DHS front office; approval and submission to OMB is pending.

<sup>6</sup> 5 U.S.C. § 552a. See also *Privacy Policy Guidance Memorandum 2007-01 (as amended January 12, 2007)* (requiring DHS components to handle non-U.S. person data held in mixed systems, which contain data on U.S. persons and non-U.S. persons, in accordance with the Fair Information Practice Principles and administrative protections as set forth in the Privacy Act.)

<sup>7</sup> Pub. L. No. 107-347. See 44 U.S.C. Ch. 35, Subchapter III, “Information Security;” 44 U.S.C. § 3501 note.

<sup>8</sup> 6 U.S.C. § 142.

<sup>9</sup> *Privacy Policy Guidance Memorandum 2008-1*, available at: <http://www.dhs.gov/privacy-policy-guidance>.

<sup>10</sup> Directive 047-01, *Privacy Policy and Compliance (July 7, 2011)*; Instruction 047-01-001, *Privacy Policy and Compliance (July 25, 2011)*; available at: <https://www.dhs.gov/department-homeland-security-management-directives>.

<sup>11</sup> *Privacy Policy Guidance Memorandum 2008-02*; *Privacy Policy Guidance Memorandum 2007-01 (as amended January 12, 2007)*, available at: <http://www.dhs.gov/privacy-policy-guidance>.

<b>Question#:</b>	41
<b>Topic:</b>	Material Support to Terrorists I
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On February 5, 2014, you used your discretion to exempt a category of activities deemed to be material support to undesignated terrorist organizations or to individual terrorists. It is concerning for several reasons.

- First, the three elements that form the basis of the exemption are extremely broad, including “certain routine commercial transactions”, “certain routine humanitarian assistance” or “substantial pressure that does not rise to the level of duress” with no definitions as to what the exemption will encompass.
- Second, since “undesignated terrorist organizations” include terrorist organizations prior to the date they are designated, applying the broad categories of material support may include exempting support to a group recently designated, such as Al-Nusrah Front in Syria or providing support to al-Qa’ida in Iraq prior to its designation date.
- Third, from a national security and counterterrorism policy perspective, what is the rationale for the United States to allow more individuals whom admittedly provided material support to a group that would qualify as an undesignated terrorist organization or an individual terrorist into the United States.

In your prepared statement, you said that the “cornerstone of our mission at the Department has been, and should continue to be, counterterrorism—that is, protecting the nation against terrorist attacks. Without a doubt, these threats come from individuals seeking admission to our country.

At least two individuals associated with the now designated terrorist organization, al-Qa’ida in Iraq and who were ultimately linked to attacks against US troops fighting in Iraq, were admitted into our country as refugees. These two men are now serving hefty prison terms as a result of the U.S. prosecuting them on a terror plot they were involved in while in the United States.

These cases to me highlight that we must be more vigilant, not less, when evaluating persons who are seeking admission to the United States.

Why did you use such broad categories of material support that you determined are exempted—for example, what does “certain routine commercial transactions” mean?”

Would an individual who admitted to transferring \$100 a month over the course of a year to an individual associated with al-Nusrah (“al nooz-rah”) Front in Syria prior to its

<b>Question#:</b>	41
<b>Topic:</b>	Material Support to Terrorists I
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designation as a terrorist organization be eligible for an exemption under your authority?

There is already an exemption for material support provided under duress to certain groups. What is the rationale behind now including "substantial pressure that does not rise to the level of duress"? Can you provide examples?

Since this exemption authority was announced, provide the number of aliens who are currently under consideration for application of the exemption by USCIS.

**Response:** The U.S. Department of Homeland Security has not yet considered any individuals under these recently signed exemption authorities. The administration, through the interagency process, is in the process of developing guidelines for implementation of the exemptions. These guidelines contain definitions of key terms such as "routine commercial transactions" and "substantial pressure." Once they are finalized, we are happy to share these implementation agreements with you in your oversight capacity, and to discuss how they would apply to your specific questions above. The implementation agreements will assist adjudicators in applying the exemptions to individual case adjudications, though every adjudication will require an assessment of the totality of the circumstances of the material support provided by the applicant. And no individuals will be considered for an exemption unless and until all background and security checks have cleared.

<b>Question#:</b>	42
<b>Topic:</b>	Material Support to Terrorists 2
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As I mentioned in the hearing, 116 of those released were convicted of homicide, including one convicted of willfully killing a public official. The administration claims that 72% of these were released in accordance with a court order. I've asked for evidence to prove this.

Will you provide this evidence to me?

I'd like to know how the release of these murderers occurred and whether you have made any effort to relocate them?

In the case of releases that were completely voluntary and at the discretion of DHS, will the department please explain to me those decisions and specific cases in detail?

**Response:** As you are aware, U.S. Immigration and Customs Enforcement's (ICE) custody and release determinations are made either as a matter of discretion<sup>12</sup> or as a matter of controlling law. In cases where the decision to release an alien from ICE custody is not based on discretion, an alien may be released pursuant to an individual Federal court order or in accordance with legal precedent, such as the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (limiting detention of aliens with final orders of removal to that period of time when removal is significantly likely in the reasonably foreseeable future) and *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) (requiring the government to provide bond hearings to certain aliens who have been held in immigration detention for six months or longer).

In fiscal year 2013, 169 aliens with homicide related convictions were released from ICE custody. Of that number, 154 were released from ICE custody due to court order or due to *Zadvydas*. ICE has identified 15 criminal aliens with homicide-related convictions who appear to have been released from custody based on ICE's custodial discretion either due to eligibility for bond (pursuant to Section 236 of the *Immigration and Nationality Act*) or for compelling reasons such as health or age.

<sup>12</sup> See memoranda from John Morton, former ICE Director, *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship* (Nov. 19, 2009); *Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions* (Aug. 20, 2010); *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011); and *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011). These policy memoranda can be viewed at <http://www.ice.gov>.

<b>Question#:</b>	42
<b>Topic:</b>	Material Support to Terrorists 2
<b>Hearing:</b>	Oversight of the Department of Homeland Security
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Please find further information regarding the 15 individuals below. Following review of the information available on the cases, it appears:

- Six individuals were released on bond under the *Immigration and Nationality Act's* discretionary (non-mandatory) detention provision at Section 236(a).
- Seven additional individuals were not subject to mandatory detention under the *Immigration and Nationality Act* due to the nature of their homicide-related conviction (e.g., involuntary manslaughter) or the date of their conviction. These individuals were released on Orders of Release on Recognizance and subject to appropriate conditions of release/reporting requirements. Department of Homeland Security records indicate that one alien departed the United States in December 2013 after an immigration judge granted voluntary departure, and for at least three of these individuals, their releases involved humanitarian factors (sole caretaker of a sick spouse and elderly/sick parents; primary caretaker of five children; and advanced age at 91 years old).
- One individual was released due to a grant of deferred action for law enforcement purposes; his case was subsequently administratively closed by an immigration judge.
- One individual was released on an Order of Supervision as the individual was/has been unable to obtain medical clearance for removal due to a deteriorating medical condition.

ICE continues to manage all pending cases in removal proceedings and after issuance of a final order of removal. Any alien who fails to depart the United States following the issuance of a final order of removal, deportation, or exclusion becomes a “fugitive alien.” ICE locates and arrests “fugitive aliens” consistent with its enforcement priorities.

Please note that the individual referenced in your question as having been convicted of willfully killing a public official had in fact been convicted of a different offense. The information relating to a conviction for willfully killing a public official was a data entry error in ICE’s case management system.

<b>Question#:</b>	43
<b>Topic:</b>	Intellectual Property Rights
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Over the past several years, the National Intellectual Property Rights Coordination Center (IPR Center) and its partner agencies have collaborated on combatting the growing problem of illegal sales of counterfeit goods and digital content theft online. The IPR Center has actively worked to protect consumers through its enforcement and public education efforts. The Department of Commerce estimates that more than 40 million American jobs and two-thirds of our exports depend on intellectual property. Further, the total global economic value of counterfeit and pirated products has been estimated to be as much as \$650 billion every year. The efforts of the IPR Center and its partner agencies help protect and preserve these jobs and economic benefits, as well as ensure consumers can access safe and innovative products and services. Will you continue to make intellectual property protection a priority at the Department?

**Response:** The Department of Homeland Security is committed to protecting intellectual property as an ongoing priority and will provide the funding and resources necessary to ensure that this critical mission continues. The enforcement of intellectual property law remains a priority for both U.S. Immigration and Customs Enforcement Homeland Security Investigations and U.S. Customs and Border Protection.

<b>Question#:</b>	44
<b>Topic:</b>	Rodriquez v. Robbins
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As you know, the Ninth Circuit in Rodriquez found that the mandatory detention statute for criminal aliens and aliens in expedited removal proceedings, 8 U.S.C. sections 1226(c) and 1225(b), which provides that the Attorney General “shall” take into custody certain categories of aliens who are in immigration proceedings, does not mean what it says. Rather, the Ninth Circuit found, contrary to the plain language of the statutes, that aliens who are not subject to final orders of removal are entitled to a bond hearing after six months of detention. Further, the court found that after six months of detention, the burden is on the government to show by clear and convincing evidence that the alien’s continued detention is justified by a risk of flight or a danger to the community. This decision is contrary to the plain language of the statutes and the Supreme Court’s decision in *Demore v. Kim*, 538 U.S. 510 (2003). Moreover, the result of this decision is that more criminal aliens are being released into our communities. As the Rodriquez court noted, since this bond hearing requirement was put into place by the district court, two- thirds of the aliens who obtained a bond hearing were released.

What was DHS’s recommendation to the Department of Justice as to whether the government should see *en banc* review of the Rodriquez decision and/or a writ of certiorari to the U.S. Supreme Court? Please explain the reason for DHS’s position in this case.

**Response:** The deadlines to seek rehearing or certiorari for the Ninth Circuit’s April 16, 2013 decision in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) have passed. However, that decision involved only a preliminary injunction on certain legal claims made by the plaintiffs in the case, and the government has subsequently filed appeal of the district court’s permanent injunction addressing all claims, which was entered on August 6, 2013. The government’s brief on appeal was filed on July 8, 2014, arguing that the district court erred in requiring bond hearings at six months for all detained aliens, in ruling that the burden shifts to the government to establish flight risk or danger to the community by clear and convincing evidence, and in ruling that immigration judges must consider alternatives to detention. The Department of Homeland Security supports the appeal. However, in light of the pending litigation, we are not in a position to further elaborate on issues of legal strategy.

<b>Question#:</b>	45
<b>Topic:</b>	cyber threats 1
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Sheldon Whitehouse
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As we discussed, DHS is the lead federal agency responsible for working with state and local government agencies, including state and local law enforcement agencies, to help them protect their own information systems against cyber threats. Could you explain, in detail, how DHS carries out this mission? Given the limited resources that many local law enforcement agencies have to respond to cyber attacks, is DHS planning to expand its efforts in this area, particularly with respect to small police departments?

**Response:** DHS coordinates the national protection, prevention, mitigation of, and recovery from significant cyber and communications incidents; disseminates domestic cyber threat and vulnerability analysis across various sectors; and investigates cybercrimes under DHS's jurisdiction. DHS components actively involved in cybersecurity include National Protection and Programs Directorate (NPPD), the United States Secret Service (Secret Service), the U.S. Coast Guard, U.S. Customs and Border Protection, Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI), the DHS Office of the Chief Information Officer, the DHS Office of Intelligence and Analysis, and the Science and Technology Directorate, among others. In all of its activities, DHS coordinates its cybersecurity efforts with public, private sector, and international partners.

The Secret Service and ICE-HSI partner through a network of 35 Electronic Crimes Task Forces (ECTFs) with state and local law enforcement agencies to prevent, detect, and investigate various forms of cyber crimes, including potential terrorist attacks against critical infrastructure and financial payment systems. The Secret Service also trains state and local law enforcement officials, prosecutors, and judges on digital evidence handling and cyber crime investigations through the National Computer Forensics Institute (NCFI)<sup>13</sup> in Hoover, AL. Since opening in 2008, NCFI has held over 150 cyber and digital forensics courses in 16 separate subjects and trained and equipped more than 3,400 state and local officials, including more than 2,300 police investigators, 840 prosecutors, and 230 judges from all 50 states and three U.S. territories. These NCFI graduates represent more than 1,500 agencies nationwide. NCFI has the capacity to train up to 2,000 law enforcement officials annually; however, it currently operates at less than 50% capacity with the resources provided in the FY 14 budget. These cyber investigative resources are especially critical to assist small police departments in accomplishing their mission, as you note.

In addition to DHS's cyber investigative resources, NPPD assists the governments of US states and territories to obtain advanced security tools to protect their own networks.

<sup>13</sup> More information available at: <http://www.ncfi.usss.gov/>.

<b>Question#:</b>	45
<b>Topic:</b>	cyber threats 1
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Sheldon Whitehouse
<b>Committee:</b>	JUDICIARY (SENATE)

DHS recently forged a cooperative agreement with the Center for Internet Security (CIS) Multi-State Information Sharing and Analysis Center<sup>14</sup> to provide state-of-the-art managed security services to US states and territories in conjunction with their use of the NIST Cybersecurity Framework.<sup>15</sup> As part of this agreement, CIS will provide Managed Security Services, funded by DHS, to states and territories in 2014. These services include intrusion detection, intrusion prevention, netflow analysis, and firewall monitoring. While states and territories must retain full authority and ownership over their networks and manage those networks commensurate with risk, these DHS-enabled services and the implementation of the Framework are critical tools for our state and local partners to achieve better cybersecurity.

<sup>14</sup> More information available at: <http://msisac.cisecurity.org/>.

<sup>15</sup> Available at: <http://www.nist.gov/cyberframework/>.

<b>Question#:</b>	46
<b>Topic:</b>	cyber threats 2
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Sheldon Whitehouse
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During your testimony, we discussed the need for a “common strategy” among the different agencies with responsibility for addressing the cyber threat. Please explain how responsibility for cyber investigations is currently divided among the different components within DHS that have responsibility in this area. How we can improve our current structures – both within DHS and across the government – so that we are in a position to effectively combat the cyber threats we face now as well as the threats we will face in the years ahead?

**Response:** The Department of Homeland Security is the nation’s largest law enforcement agency, employing more than 46% of all federal law enforcement officers, and DHS executes its law enforcement responsibilities in close coordination with the Department of Justice, in particular the Criminal Division and U.S. Attorney’s Offices. The United States Secret Service (Secret Service) and Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI) are the primary DHS agencies that investigate cyber crime, and closely coordinate their cyber investigative efforts with DHS’s National Cybersecurity and Communications Integration Center (NCCIC), a 24x7 cyber situational awareness, incident response, and management center for the Federal Government, intelligence community, and law enforcement.

The Secret Service is assigned specific authority to investigate all violations under the principal computer hacking law—the Computer Fraud and Abuse Act,<sup>16</sup> and has broad authority to investigate crimes related to the theft of payment card data, fraudulent use of sensitive personal identity information, and other criminal violations related to the U.S. financial system.<sup>17</sup>

ICE-HSI authority to enforce customs-related violations is broad, encompassing the investigation of crimes involving money laundering; the sale and distribution of narcotics and controlled substances; and child exploitation; the export and import of illegal arms and controlled commodities; and the smuggling and sale of other prohibited items. Included under ICE-HSI purview is cyber-enabled crime and the use of cyberspace to engage in any of the aforementioned illicit activities.

Since 1997, the ICE-HSI Cyber Crimes Center (C3) has operated as a cyber center of excellence to support, coordinate and deconflict transnational cyber investigations with headquarters counterparts of the Federal Bureau of Investigation (FBI) and the Secret Service, as well other domestic and international partners. ICE-HSI and the Secret

<sup>16</sup> See 18 U.S.C. §1030(d)(1).

<sup>17</sup> See 18 U.S.C. §§1029(d) & 3056(b).

<b>Question#:</b>	46
<b>Topic:</b>	cyber threats 2
<b>Hearing:</b>	Oversight of the Department of Homeland Security
<b>Primary:</b>	The Honorable Sheldon Whitehouse
<b>Committee:</b>	JUDICIARY (SENATE)

Service also partner through the Secret Service's network of 35 Electronic Crimes Task Forces to prevent, detect, and investigate various forms of cyber crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

DHS law enforcement agencies routinely coordinate their criminal investigations, including investigations of cyber crimes, with other external law enforcement agencies. This coordination is most commonly conducted directly among the relevant local offices of the various federal, state, local, tribal, territorial, or foreign law enforcement agencies interested in a particular criminal case. Federal criminal investigations are always conducted in conjunction with relevant U.S. Attorneys' Offices. As appropriate, federal investigations are coordinated through International Organized Crime Intelligence and Operations Center (IOC-2); federal cyber crime cases are often coordinated by the Department of Justice's Computer Crime and Intellectual Property Section (CCIPS). DHS law enforcement agencies also routinely partner with foreign and international law enforcement agencies through their international field offices. Finally, the Science and Technology Directorate supports a Law Enforcement Working Group, to coordinate cyber security R&D support to DHS and other Federal law enforcement agencies.

DHS is committed to creating a safer, more secure, and resilient cyber environment in collaboration with our public, private, and international partners. Law enforcement capabilities are an essential part of the national effort to reduce cyber threats, and should be conducted in a coordinated manner. We are continually assessing how to adapt our current law enforcement structures to best counter cyber threats.



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*Creating Jobs Through Investments*

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**Jill Jones, Director**  
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**William J. Stenger, Director**

**Henry Liebman, Director Emeritus**  
**Stephen Yale-Loehr, President Emeritus**

June 18, 2014

Honorable Patrick Leahy  
 Chairman

Honorable Charles Grassley  
 Ranking Member

United States Senate Committee on the Judiciary  
 224 Dirksen Senate Office Building  
 Washington, DC 20515

**RE: Economic impact of the EB-5 Regional Center Program for the Congressional Record**

Dear Mr. Chairman and Mr. Ranking Member:

On behalf of all Association to Invest in the USA (IIUSA) officers, directors, and members, I write in follow up to the Judiciary Committee's oversight hearing of June 11, 2014 with Department of Homeland Security Secretary Jeh Johnson to provide peer-reviewed economic impact data of the EB-5 Regional Center Program (the "Program") for 2010-2011 and 2012.

IIUSA is the 501(c)(6) not-for-profit trade association for the EB-5 Regional Center industry. Our members account for over 95 percent of all capital flowing through the EB-5 Program. IIUSA advocates for policies that will maximize the Program's economic contribution to the United States, including permanent authorization, enhanced visa capacity, program integrity, and commercially viable processing of EB-5 related applications and petitions. Furthermore, IIUSA educates the industry through events, research, and publications with a focus on best practices for statutory and regulatory compliance.

I am pleased to submit executive summaries of two peer-reviewed economic impact studies commissioned by IIUSA, both of which demonstrate the substantial positive economic impact of the EB-5 Program to the U.S. As noted in the reports, the Program accounted for \$3.39 billion in GDP, supported over 42,000 American jobs, and generated over \$712 million in federal/state/local tax revenue in fiscal year 2012. This was over a two-fold increase from the 2010-2011 economic impact report, and comes at no cost to the U.S. taxpayer. The Congressional Budget Office has consistently scored the Program as revenue neutral.

These studies are based on comprehensive datasets of I-526 and I-829 approval/denial statistics for each Regional Center in the country for fiscal years 2010-2012, obtained through a rigorous process of data collection and subsequent analysis of I-924A filings. A breakdown of the "new commercial enterprises" and "job creating enterprises" that Regional Centers fund throughout the year, along with North American

**Association to Invest In the USA (IIUSA)**  
 Willis Tower – 233 S. Wacker Drive, 84<sup>th</sup> Floor  
 Chicago, Illinois 60606

Industry Classification System (NAICS) codes to track industry sector impacts adds further context to the data. The full reports of the economic impact studies are available upon request from IIUSA.

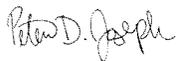
More than 25 countries, including Australia and the United Kingdom, use similar programs to attract foreign investments. The American program is more stringent than many others, requiring substantial risk for investors in terms of both their financial investment and immigration status.

- Investments made through the U.S. EB-5 program must be "at risk" in the same way that investments in stocks or equity funds carry an inherent risk. There is no guaranteed financial return.
- If their application is approved by USCIS, EB-5 investors receive a conditional visa that is valid for two years. In order to receive a permanent visa, these investors must demonstrate that the legally required economic benefits flowing from their investments have been achieved.

Annually, the EB-5 Program accounts for less than 1% of the visas issued by the U.S. Throughout the process, EB-5 investors are subject to the same background checks and national security screenings as applicants in any other visa category, and their ability to eventually apply for citizenship is subject to the same criteria as other visa holders. Like any other investment vehicle, EB-5 investment funds are subject to U.S. securities and anti-fraud laws and regulations.

IIUSA takes seriously the statutory requirement that an immigrant investor's investment results in job creation, and we believe that demonstrating this job creation is a meaningful and required part of the immigration process under the Program. By undertaking these reports, IIUSA seeks to quantify the very real positive economic impacts of the Program and highlight the Program's statutory job creation requirements.

Sincerely,



Peter D. Joseph  
Executive Director

CC: Jeh Johnson, Secretary  
U.S. Department of Homeland Security

Encl: Executive Summary of 2012 Peer-Reviewed Economic Impact Study  
Executive Summary of 2010-2011 Peer-Reviewed Economic Impact Study

## Executive Summary

**Economic Impacts of EB-5 Spending**

According to our estimates, *spending associated with EB-5 investors contributed \$3.39 billion to U.S. GDP and supported over 42,000 U.S. jobs during 2012*. This is more than a *2-fold increase* from the average annual impact result reported in 2011, and includes impacts associated with investment spending, household spending, and other immigration expenses.<sup>1</sup> During 2012 spending by EB-5 investors also contributed \$447 million to federal tax revenues and \$265 million to state and local tax revenues (see Table 11). Table 12 shows the top-10 industries impacted by all EB-5 spending. Given our estimate of \$1.55 billion in construction spending during 2012, it's not surprising that commercial construction tops the list at 14,195 jobs supported.

**Table 11: Economic Impact of All EB-5 Spending, 2012**

Summary of National Model

Impact Type	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State & Local
Direct Effect	19,173.0	\$1,323,323,561	\$190,883,756	\$80,205,467
Indirect Effect	8,510.0	\$804,022,871	\$102,899,176	\$58,886,303
Induced Effect	15,128.7	\$1,263,005,564	\$153,933,856	\$126,094,738
<b>Total Effect</b>	<b>42,811.7</b>	<b>\$3,390,351,995</b>	<b>\$447,716,777</b>	<b>\$265,186,508</b>
Factor ↑ from 2011	2.57	2.56	2.58	2.43

**Table 12: Total Economic Impact of All EB-5 Spending, 2012**

Top ten impacted sectors by employment (National Model)

Sector	Description	Jobs Supported	Contribution to GDP
34	Construction of new nonresidential commercial and health care structures	14,195.6	\$849,221,598
413	Food services and drinking places	1,942.7	\$61,879,123
367	Legal services	1,402.0	\$188,716,652
356	Securities, commodity contracts, investments, and related activities	1,181.8	\$81,359,130
360	Real estate establishments	1,125.6	\$131,024,837
369	Architectural, engineering, and related services	989.6	\$72,648,935
319	Wholesale trade businesses	980.7	\$133,128,304
394	Offices of physicians, dentists, and other health practitioners	774.4	\$63,448,106
382	Employment services	759.0	\$26,047,980
397	Private hospitals	747.1	\$56,925,288

<sup>1</sup> Kay, David (2013). *Economic Impacts of the EB-5 Immigration Program, 2010-2011*. Charlotte, NC: IMPLAN Group, LLC.

A simple 3-year average of impact results (2010-2012) shows that EB-5 spending supports over 25,000 U.S. jobs each year and contributes \$2 billion annually to U.S. GDP. Likewise, EB-5 spending also adds \$264 million to federal tax revenue each year and \$161 million to state and local tax revenues (see Table 22). This is clearly a much larger impact than originally estimated by the 2010 USCIS report, and is primarily due to an increase in the number of investors participating in the program (see Table 23-24).

### Economic Impact Projections

In addition to estimating impacts for 2010-2011, we also scaled up our results to show what impacts may look like if the current visa limit is reached (10,000) or increased (20,000). Table 22 and the following two charts show our results.

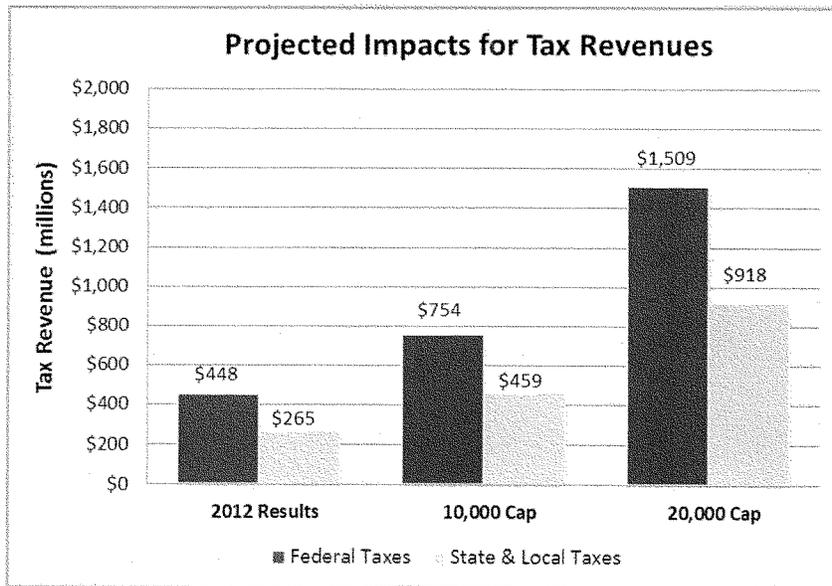
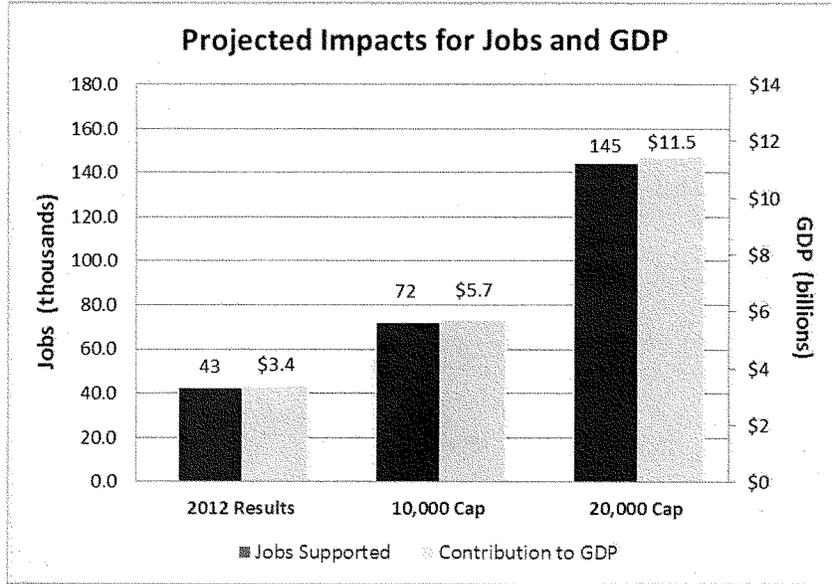
If the current regulatory environment and spending pattern remain unchanged, spending associated with EB-5 investor households would support over 72,000 U.S. jobs and contribute \$5.7 billion to U.S. GDP when the 10,000 visa limit is reached. The program would also support over \$754 million in federal tax revenues and \$459 million in state & local tax revenues. At the 20,000 visa limit, EB-5 investor spending would support over 144,000 U.S. jobs and contribute \$11.4 billion to GDP. Federal tax revenue would increase to \$1.5 billion and state & local tax revenue would increase to \$918 million.

**Table 22: Projected Economic Impact of EB-5 Spending, 2012**

Study Results from National Model

Results/Projection	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State & Local
2010-12 impact total	76,159.2	\$6,041,402,382	\$794,507,094	\$483,624,374
Impact/Year	25,386.4	\$2,013,800,794	\$264,835,698	\$161,208,124.67
Impact/Visa*	7.2	\$573,678	\$75,445	\$45,924
<b>10,000 Cap</b>	72,319.1	\$5,736,779,396	\$754,446,011	\$459,238,794
<b>20,000 Cap</b>	144,638.1	\$11,473,558,792	\$1,508,892,022	\$918,477,588
Projection ↓ from 2011	-12.9%	-13.1%	-12.6%	-15.5%

\*Please note that impacts/visa is < 10 because there can be multiple visas per investor.



## Executive Summary

**Economic Impacts of EB-5 Spending**

According to our estimates, *spending associated with EB-5 investors contributed \$2.65 billion to U.S. GDP and supported over 33,000 U.S. jobs during 2010-2011*. The results can be interpreted as a 2-year national impact for all EB-5 spending, including investments, households, and other immigration expenses. Spending by EB-5 investors also contributed \$347 million to federal tax revenues and \$218 million to state and local tax revenues. These results are totals that include direct, indirect and induced effects (see Table 11).

Table 12 shows the top-10 industries impacted by EB-5 spending. Given our estimate of \$868 million in construction spending during 2010-2011, it's not surprising that commercial construction tops the list at 8,106 jobs supported.

**Table 11**  
**Economic Impact of All EB-5 Spending, 2010-2011**  
Summary of National Model (2011 dollars reported)

Impact Type	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State & Local
Direct Effect	14,347.1	\$1,005,527,372	\$142,727,764	\$71,557,335
Indirect Effect	7,277.4	\$683,142,214	\$86,769,617	\$50,797,702
Induced Effect	11,723.0	\$962,380,800	\$117,292,930	\$96,082,826
<b>Total Effect</b>	<b>33,347.5</b>	<b>\$2,651,050,387</b>	<b>\$346,790,317</b>	<b>\$218,437,866</b>

**Table 12**  
**Total Economic Impact of All EB-5 Spending, 2010-2011**  
Top ten impacted sectors by employment (National Model | 2011 dollars reported)

Sector	Description	Jobs Supported	Contribution to GDP
34	Construction of new nonresidential commercial and health care structures	8,106.3	\$476,839,529
413	Food services and drinking places	1,749.1	\$54,781,111
319	Wholesale trade businesses	1,134.9	\$149,251,826
360	Real estate establishments	905.7	\$103,658,075
356	Securities, commodity contracts, investments, and related activities	682.4	\$46,194,810
367	Legal services	675.0	\$89,334,920
382	Employment services	656.1	\$22,141,784
369	Architectural, engineering, and related services	627.0	\$45,258,748
394	Offices of physicians, dentists, and other health practitioners	583.7	\$47,023,892
397	Private hospitals	572.1	\$42,861,889

A simple average of the 2-year impact shows that EB-5 spending supports over 16,000 U.S. jobs each year and contributes \$1.3 billion to U.S. GDP. Likewise, investor spending adds \$173 million in federal tax revenue annually and \$109 million in state and local tax revenue (see Table 22). This is clearly a much larger impact than originally estimated by the 2010 USCIS report, and is primarily due to an increase in the number of investors participating in the program (see Table 23-24).

### Economic Impact Projections

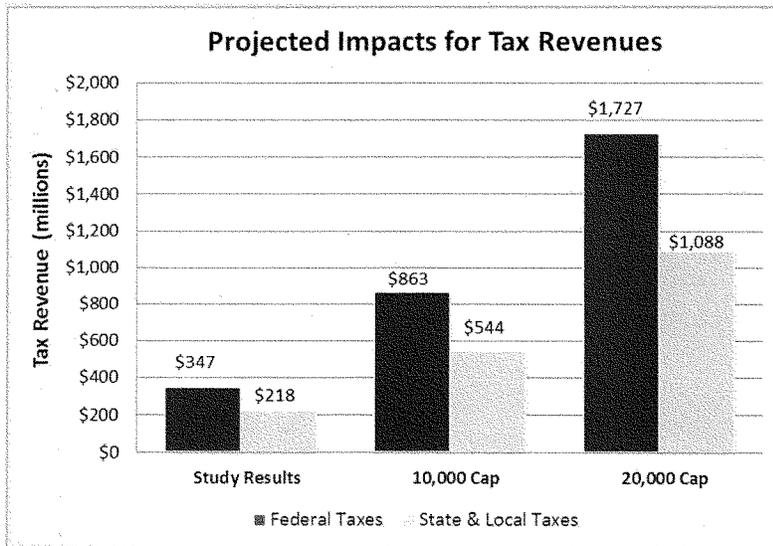
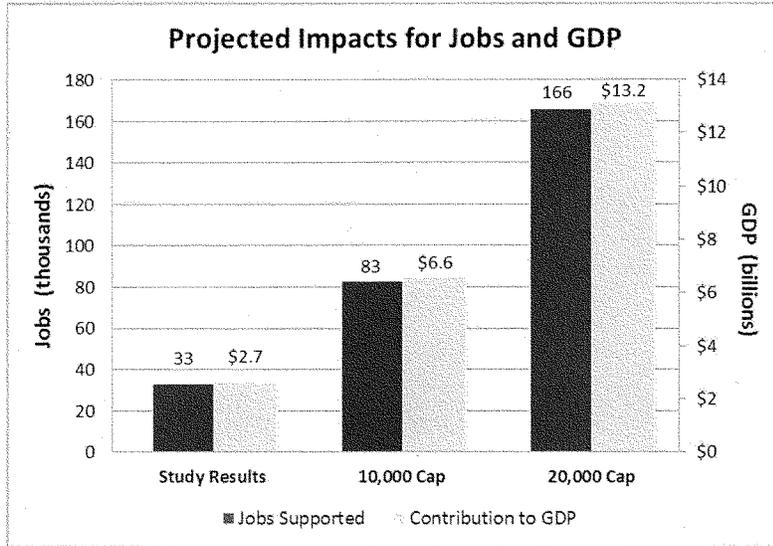
In addition to estimating impacts for 2010-2011, we also scaled up our results to show what impacts may look like if the current visa limit is reached (10,000) or increased (20,000). Table 22 and the following two charts show our results.

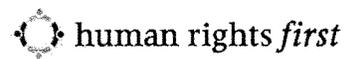
If current regulatory and economic environments remain unchanged, economic impact results would increase almost 2.5 times at the 10,000 visa cap. In this scenario, EB-5 spending would support over 83,000 U.S. jobs and contribute \$6.6 billion to U.S. GDP. Federal tax revenues would increase to \$863 million and state & local tax revenues would increase to \$544 million. At the 20,000 visa cap impact results would increase almost 5-fold from current levels. EB-5 spending would then support over 166,000 U.S. jobs and contribute 13.2 billion to GDP. Federal tax revenue would increase to \$1.7 billion and state & local tax revenue would increase to \$1.1 billion.

**Table 22**  
**Projected Economic Impact of EB-5 Spending, 2010-2011**

Study Results from National Model (2011 dollars reported)

Projection	Jobs Supported	Contribution to GDP	Tax Revenue	
			Federal	State & Local
Study Results	33,347.5	\$2,651,050,387	\$346,790,317	\$218,437,866
Impact/Year	16,673.8	\$1,325,525,194	\$173,395,159	\$109,218,933
Impact/Visa	8.3	\$659,958	\$86,331	\$54,378
<b>10,000 Cap</b>	83,015.9	\$6,599,577,762	\$863,306,739	\$543,783,585
<b>20,000 Cap</b>	166,031.9	\$13,199,155,524	\$1,726,613,478	\$1,087,567,170





**STATEMENT FOR THE RECORD OF ELEANOR ACER**

**Director, Refugee Protection**

**HUMAN RIGHTS FIRST**

**On**

**“Oversight of the U.S. Department of Homeland Security”**

**Submitted to the**

**Senate Judiciary Committee**

**June 11, 2014**

**About Human Rights First**

Human Rights First is a non-profit, nonpartisan human rights advocacy organization that challenges America to live up to its ideals. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at U.S. law firms.

**The Rise in Protection Requests on the U.S.-Mexico Border**

Over the last few years the number of individuals detained in "expedited removal" along the U.S. southern border who have expressed a fear of return has sharply increased. The overwhelming majority of these people are from El Salvador, Guatemala, Honduras and Mexico, where a rise in murders, rape, violence against women, kidnappings, extortion, and other brutality - fueled by political instability, economic insecurity, breakdown of the rule of law, and the dominance of local and transnational gangs - are prompting many people to flee their homes.

It has been suggested that this increase in protection requests reflects fraud, and that asylum is a "loophole" that allows perpetrators of fraud to gain entry to the United States. This view has led some to call for more immigration detention and for changes to lower pass rates for the expedited removal system's protection screening interviews, called "credible fear" interviews. Yet there is also broad agreement that protecting those who flee persecution is an important American value.

How to address the multiple challenges associated with this increase in protection requests presents the U.S. government with a thorny dilemma, one that is complicated by the political demands to secure the border before moving ahead with immigration reform legislation. The recommendations outlined below are informed by Human Rights First's recent visits to key border points, border patrol stations, and immigration detention facilities in Arizona, California and Texas as well as our first-hand experience assisting and providing *pro bono* representation to asylum seekers including some who have come to this country through the southern border. Human Rights First released a detailed Blueprint of its recommendations in June 2014.<sup>1</sup>

**The Resource Imbalances**

Over the years, resources for immigration enforcement, including Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) have quadrupled – rising from \$4.5 billion in 2002 to \$18 billion in FY 2013. Under expedited removal, immigration enforcement officers, rather than immigration judges, can order the deportation of immigrants lacking valid documentation. Not only has the use of expedited removal increased, but so too have the number of individuals referred into expedited removal's credible fear process, rising from 7,917 in 2004 to 36,035 by 2013. This increase is particularly steep between 2010 and 2013 – with the number more than doubling between 2012 and 2013.

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<sup>1</sup> For the full Human Rights First Blueprint visit <http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border>.

**Statement for the Record  
Human Rights First**

Despite the sharp increase in expedited removal in recent years and the massive increases in resources for CBP and ICE which handle the initial stages of the expedited removal process, there was not a parallel sharp increase in resources for expedited removal's credible fear screening process or the subsequent adjudication process before the immigration courts. The immigration system at the border is imbalanced, with extraordinary resources put in to the capacities to apprehend and detain but too few resources allocated to the protection and adjudicatory components of the expedited and regular removal processes. This imbalance has led to backlogs and delays that can undermine the integrity of these systems, increase costs at the tail end of the process, and leave asylum seekers in limbo for years. It has also prompted changes that have undermine protection – like the shift to the use of telephone calls to conduct credible fear interviews and efforts to heighten the credible fear standard.

As the use of expedited removal and number of credible fear interviews grew over the years, so too did the wait times and backlog in credible fear interviews. To address these delays, the USCIS Asylum Division began redeploying staff to conduct credible fear interviews more promptly after arrival, hiring additional staff, and increasing the use of the telephone to conduct interviews with asylum seekers held at detention facilities that are often located hours away from immigration detention facilities. The deployment of asylum officers from the affirmative asylum process to address the credible fear delays has led to a growing backlog of affirmative asylum filings; and many “affirmative” asylum seekers now wait months or years for their asylum interviews – a potential vulnerability that could be exploited, and also a source of enormous hardship to legitimate asylum seekers. Prolonged delays also remain in “reasonable fear” interviews (the screening interviews conducted as part of reinstatement of removal).

The immigration court system, which receives the expedited removal cases that successfully pass out of the credible fear process, is widely recognized to be overstretched, backlogged, and underfunded. While immigration enforcement budgets increased by 300% between 2002 and 2013, funding for the immigration courts has lagged far behind, increasing by only 70%. Over 366,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 578 days.

#### **Alternatives to Detention**

On May 29, 2014, Secretary Johnson testified before the House Judiciary Committee that, “alternatives to detention in general is an important program.” Alternatives to detention, including the technology-only slots operated by ICE itself, the more case-management or intense electronic monitoring forms operated by a private contractor, or pilots with social service providers have been used increasingly in recent years. Alternatives to detention (ATDs) save costs, with the current contract at a mere 17 cents to \$17 rather than the \$160 per day average of one detention bed. In addition, the most recent statistics report that 97.4% percent of participants in the ISAP II alternatives to detention program used by ICE appear at their final immigration court hearing, and 85 percent comply with removal orders. Secretary Johnson stated before the Committee that “there are instances where it is not necessary, given the costs to the taxpayer, to detain people who are in the system, and therefore alternatives to detention is something that can and should be looked at and funded by this Congress.” With alternatives to detention used increasingly in the criminal justice system, a wide range of experts – including the Pretrial

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Justice Institute, the Texas Public Policy Foundation (home to Right on Crime) – have endorsed alternatives as cost-saving.

ICE should step up its capacity to use alternatives to detention as a major part of its strategy to address any appearance concerns relating to individuals who need additional supervision to assure appearance upon release from detention after crossing or arriving at the southern border. Asylum seekers have traditionally appeared for their immigration court hearings at relatively high rates. A greater focus on identifying individuals who meet the requirements for parole, bond or release on alternative monitoring measures, will help free up more bed space so that asylum seekers and immigrants are not held for days in CBP custody while waiting for space to become available. Rather than pointing to a need for additional detention facilities, this situation could be managed with a much better use of existing detention space.

The Administration and DHS should reject the notion that it is required to fill a minimum number of beds and strongly support a shift to using alternatives to detention, rather than detention, in appropriate cases that do not present safety risks. Secretary Johnson testified that his interpretation of bed quota is “beds, not people,” an interpretation agreed to by Rep. Labrador at the May, 29, 2014 House Judiciary Committee hearing. Congress should increase appropriations for alternatives to detention and eliminate the bed “quota,” appropriations language that some interpret as a requirement that a minimum number of beds be filled regardless of need. Congress should also grant ICE flexibility to shift funds, based on need, between detention and alternatives to detention. Secretary Johnson stated at the hearing that, “arriving at the right balance between what we devote to those who should be detained and those who can be released as an alternative to detention is a difficult job that we have to continually evaluate to achieve that balance that ensures public safety and maximizes the efficient use of taxpayer dollars. So that’s what I’m interested in doing, in working with the Congress to try to achieve.” This budget flexibility would support achieving that balance. Moreover, by adequately funding the immigration courts and eliminating hearing delays, the cost-savings of alternatives will be fully realized.

**Effective, Fiscally-Prudent Solutions that Reflect American Values**

The Obama administration and the U.S. Congress have the tools to address these complex challenges. The administration should step up its use of alternatives to detention, repair protection safeguards, and enhance tools for addressing abuse. Congress should properly resource the asylum office and immigration courts to reduce backlogs and vulnerability to abuse, support legal presentations in more immigration detention facilities and within days of detention, and support the increased use of alternatives to detention. These solutions are fiscally prudent, effective and reflect American values. For example, alternatives to detention have been endorsed by a wide spectrum of groups and are increasingly turned to in criminal justice systems because they are highly effective measures that can help meet the government’s objective to secure appearance, while mitigating much of the immense human and fiscal costs of institutional detention. Initiatives that provide immigrants with accurate legal information have been demonstrated to improve efficiencies in immigration court, and certainly contribute – along with quality legal counsel – to more just and fair results. Measures such as adequately funding the immigration courts and asylum office, which will require appropriations of additional funding,

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will strengthen systems that have been neglected for years and constitute smart investments in the integrity of the U.S. immigration court and asylum systems. We know timely asylum and immigration court removal processes deter people from exploiting them. U.S. immigration authorities, at every step in the process, also have extensive tools to identify potential abuse, criminal activity and security risks and these tools have been significantly enhanced in recent years.

**RECOMMENDATIONS**

In order to address the increase in protection requests at the border Human Rights First recommends that lawmakers:

**PROPERLY RESOURCE ASYLUM OFFICE AND IMMIGRATION COURTS TO REDUCE BACKLOGS AND VULNERABILITY TO ABUSE**

- Congress should appropriate funds to increase nationally the number of immigration court judges, law clerks, and related resources to address removal hearing delays, eliminate backlogs and conduct timely hearings.
- Congress should appropriate funds to increase asylum office staffing and resources to conduct timely in-person credible fear and reasonable fear screening interviews and address backlogs, without diverting staff from conducting timely affirmative asylum interviews.

**LAUNCH MEASURES TO SUPPORT APPEARANCE**

- Congress should support more capacity and smarter use of alternatives to detention nationally in place of detention for border arrivals determined to need appearance support and who present no danger to the community. Congress should increase funding for alternatives to detention and grant ICE flexibility between the detention and alternatives budget so that experienced agency law enforcement officials can make custody determinations on a case-by-case basis.
- Congress should reform the U.S. approach to immigration detention: Congress should ensure that ICE conduct additional training and has oversight in implementation of bond and parole policies. Congress should support a transition to civil immigration detention by providing funding to implement more civil detention standards and oversight to ensure proper implementation.

**ADDRESS GAPS IN ACCURATE INFORMATION ABOUT THE PROCESS**

- Congress should appropriate funds for expansion of cost-efficient legal information presentations to all facilities within a few days of arriving in detention.
- Congress should support projects to increase legal counsel for vulnerable populations, including vulnerable indigent asylum seekers in immigration detention.

**ENHANCE TOOLS FOR DETECTING AND INVESTIGATING ABUSE AND  
CRIMINAL ACTIVITY**

- Congress should support, if necessary, an increase in funds to increase ICE capacity to manage its caseload and USCIS capacity to conduct background checks in an automated manner.

**ADDRESS TRIGGERS OF FLIGHT AND STRENGTHEN – DO NOT WEAKEN -  
PROTECTION SAFEGUARDS**

- Congress should support efforts to increase inter-agency attention to promote outcomes to confront impunity and rule of law challenges contributing to flight and to support non-profit legal groups to assist and provide accurate information to displaced victims within countries of origin. All proposed actions should be consistent with U.S. refugee protection and human rights commitments, and all measures should include protection mechanisms.
- Congress should fund comprehensive USCIRF study, of expanded expedited removal and detention.
- In line with the recommendations of USCIRF and the strong bipartisan history of support for asylum and refugees, Congress should encourage the administration to strengthen, rather than weaken, existing safeguards to protect refugees. USCIS should conduct credible fear interviews in person and in a timely manner, end telephone interviews, revise flawed language in the newly re-issued 2014 Credible Fear Lesson Plan, and intensify supervisory review of decisions under the plan.

**Conclusion**

Effectively addressing these challenges should be a top priority for both the Administration and Congress. This surge is part of a pressing challenge along the southern border. The United States has a strong interest in maintaining the integrity and effectiveness of its immigration and asylum systems and safeguarding them from abuse. This interest is particularly crucial during a very public debate on immigration reform. America also has a strong interest in maintaining its global leadership in protecting the persecuted. Over thirty three years ago, President Ronald Reagan signed into law the Refugee Act of 1980, which passed Congress with strong bi-partisan support, enshrining into domestic law America's historic commitment to protect the persecuted. As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Governor Jeb Bush and former Clinton White House chief of staff Thomas "Mack" McLarty, pointed out – and a group of leading Republicans recently affirmed - the U.S. commitment to protect refugees from persecution is "enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugee face greater risks everywhere."<sup>2</sup> America can and should stand firm as a beacon of hope for those fleeing persecution.

<sup>2</sup> Statement in Support of U.S. Commitment to Refugees available at <http://www.humanrightsfirst.org/sites/default/files/Republican%20Statement.pdf>.

INTERVIEWS WITH INDIVIDUALS MIGRATING TO THE UNITED STATES  
CONDUCTED BY U.S. BORDER PATROL AGENTS

*Summary*

**Executive Summary:**

On May 28, 2014, Rio Grande Valley (RGV) Sector Intelligence Analysts, Border Patrol Agents-Intelligence, station collateral intelligence agents and detailed Alien Smuggler Identification and Deterrence (ASID) team members conducted interviews of numerous OTM family units and UACs at the McAllen, Rio Grande City and Weslaco stations. The main task objective was to determine the factors compelling the OTMs to migrate to the US, in addition to other migration issues. This report provides information that addresses STC PIR 3.

**Details:**

On May 28, 2014, Rio Grande Valley (RGV) Sector Intelligence Analysts, Border Patrol Agents-Intelligence, station collateral intelligence agents and detailed Alien Smuggler Identification and Deterrence (ASID) team members conducted interviews of numerous OTM family units and Unaccompanied Alien Children (UACs) at the McAllen, Rio Grande City and Weslaco stations. The main task objective was to determine the factors compelling the OTMs to migrate to the United States, in addition to other migration issues. This report provides information that addresses the STC PIR 3. The breakdown of the interviewed OTMs is as follows:

Honduras: 129 subjects  
El Salvador: 598 subjects  
Guatemala: 43 subjects

Total number of subjects interviewed: 230 (This total includes several UACs from each country)  
(Comments: The interviewed OTM family unit adult members and the UACs will be referred to as "the subjects" within this document; unless, otherwise indicated.)

The responses to the following questions focus on what the majority of the subjects stated during the interviews. Responses provided by only one or two subjects have been omitted, as the focus of the mission was to obtain a general consensus as to why OTM family units and UACs are migrating en masse to the United States via the RGV Sector area of responsibility (AOR).

(Comments: This report updates information previously documented in HSIR-RGV-14-2283152, titled, OTM Travel from Central America to Rio Grande Valley Sector.)

**Why did you choose this particular time to make your journey to the United States?**

The main reason the subjects chose this particular time to migrate to the United States was to take advantage of the "new" U.S. "Law" that grants a "free pass" or permit (Referred to as "permisos") being issued by the U.S. government to female adult OTMs traveling with minors and to UACs. (Comments: The "permisos" are the Notice to Appear documents issued to undocumented aliens, when they are released on their own recognizance pending a hearing before an immigration judge.) This information is apparently common knowledge in Central America and is spread by word of mouth, and international and local media. A high percentage of the subjects interviewed stated their family members in the U.S. urged them to travel immediately, because the United States government was only issuing immigration "permisos" until the end of June 2014. (Comments: Several mentioned they had heard the "permisos" would only be issued until the end of May 2014.) The issue of "permisos" was the main reason provided by 95% (+/-) of the interviewed subjects.

The second reason was related to the increased gang-related violence in Central America that authorities are unable to contain. Many subjects stated gang members were extorting them, if they had a small business, or forcing their minor children to join their gang. They felt they were in danger if they remained in their country and decided to migrate.

Lastly, many subjects stated they had only recently secured sufficient funds to make the journey to the United States. The money was obtained, for the most part, from relatives or friends already in the US, or by saving over a long period of time, for a combination of both.

(Comments: In many cases the subjects mentioned more than one reason for migrating to the United States at this particular time,)

What factor(s) influenced your decision to migrate to the United States?

As previously stated, the interviewed subjects overwhelmingly indicated to have traveled to the United States due to fact "permisos" were being issued to family units and UACs by the US government. Although economic and security concerns also influenced their decision to travel to the US, the issuance of "permisos" to family units was the primary reason for leaving their countries. The subjects also indicated that "everyone" in their home countries is aware that "permisos" are being issued to family units in south Texas. The news of these "permisos" is spread by word of mouth and international and local media. Some of the news outlets mentioned were Univision, Primer Impacto, Al Rojo Vivo, TN5-Honduras, Channel 6-Honduras, Channel 7-Mexico and HCH-Honduras. The majority of the subjects interviewed left their country en route to the United States within 30 days of becoming aware of the "permisos." (Comments: It appears that most news broadcasts referencing the issue of "permisos" are information/normal reporting, and not a promotional campaign to encourage citizens to migrate. There may, of course, be some exceptions.)

Another factor influencing the decision to migrate to the US was the extreme poverty, sky-high unemployment, poor living conditions, and below par education in Central America. The majority of the subjects stated that stable employment was difficult to obtain. Many subjects stated that when they were able to find a job, the wages they earned were not sufficient to purchase basic necessities. Several subjects mentioned recent increases in the minimum wage in their countries had been offset dramatically by an increase in the cost of basic food staples.

Another reason is the ever-increasing gang-related violence in Central American countries. Authorities in Central America seem powerless to curb gang-related crime and violence that impacts the lives of all citizens. Assaults, murders, extortion, kidnappings, and the forced recruitment of minors to join the gangs were mentioned as factors influencing migration to the US.

Lastly, many adult females mentioned domestic abuse as a reason for leaving their countries. Additionally, their legal or common-law husbands are either unable or unwilling to support the family unit. (Comment: In many cases, the subjects mentioned more than one reason for migrating to the United States.)

Most UACs stated they were going to join parent(s) already in the US or other family members, i.e. uncles, aunts, cousins, etc. Others were traveling alone, as there was not sufficient money for the parent(s) to also make the journey. The UACs stated they wanted to take advantage of the "permiso" being issued by the US government to minors traveling alone. Many were leaving due to the high crime

in their countries and the forced recruitment into gangs. Other mentioned the availability of better education in the United States as a factor for migrating.

Why did you elect to enter the US via the RGV Sector AOR?

Most of the subjects stated the decision to enter the US via the RGV sector AOR was made by the smugglers, whether they were recruited in their home countries, while traveling through Mexico, or after arrival at the border region. Some of these smugglers had successfully smuggled the subjects' relatives or friends into the US via RGV Sector, and subjects felt confident they would also be successful.

Another reason is that this region is the closest border point to enter the US if traveling from Central America. Additionally, people from Guatemala, El Salvador, and Honduras are aware, either by word of mouth or public announcements, about the high probability of obtaining a "permiso" if you enter via the RGV Sector AOR.

Many subjects also mentioned they had heard it is "easier" and "safer" to enter the US via the RGV Sector AOR. In particular, they mentioned not having to walk long distances through remote, desert terrain in extreme weather conditions.

Lastly, several subjects mentioned they did not have an entry location identified when they left home, and that they met other OTMs along the way who were planning to enter via this sector. They merely decided to tag along with these other individuals. After successfully entering the US, many of the subjects stated they merely waited (sometimes for period of 2 hours +) for Border Patrol agents to apprehend them. When the agents did not arrive, they started walking through the brush. Some of the subjects stated they walked for as long as 7 hours until border patrol agents arrived.

Do you have family/friends in the United States?

All of the interviewed subjects stated they had family members or, to a lesser extent, friends already living in the US. The final destinations were associated with where these relatives or friends were residing. Many of the relatives and friends are undocumented aliens, who have been living in the US for periods ranging from several months to 10+ years.

What is your final destination in the US?

The interviewed subjects mentioned the following locations as their final destinations: New York, Houston, Austin, Chicago, Nevada, Nebraska, Los Angeles, South Carolina, North Carolina, Atlanta, Virginia, Indiana, New Jersey, Miami, Michigan, Tennessee, Pennsylvania, New Orleans, Arizona and Massachusetts.

Why did you not attempt to enter through a port of entry (POE)?

When asked why they did not surrender at a POE, most of the subjects stated they had been told by others, to include the smugglers, that officials at the POEs would not issue them a "permiso" and they would be sent back home. Others stated they had heard of incidents where some OTMs had been turned back at a POE. (Comments: This information has not been confirmed.) Others stated entry via a POE was not an option, as the smugglers would not allow this. Others mentioned they were taken

directly from the bus terminal in Reynosa to the river bank, where they made immediate entry into the US.

Gulf Cartel associates and alien smugglers are also “discouraging” the use of POEs by family unites, as it would result in loss income. Rumors indicate there are “lookouts” on the bridges that identify OTMs family units, which are forced into stash houses. These family units are forced to pay for smuggling services, which amount to nothing more than being taken to the river bank and crossed into the US> Prior to crossing, many of the family units are robbed of any money they have on their person. (Comments: This information has not been confirmed; but appears plausible.)

Do you have knowledge of the Honduran Foreign Ministry providing condoms or other forms of contraceptives to female Hondurans migrating to the US?

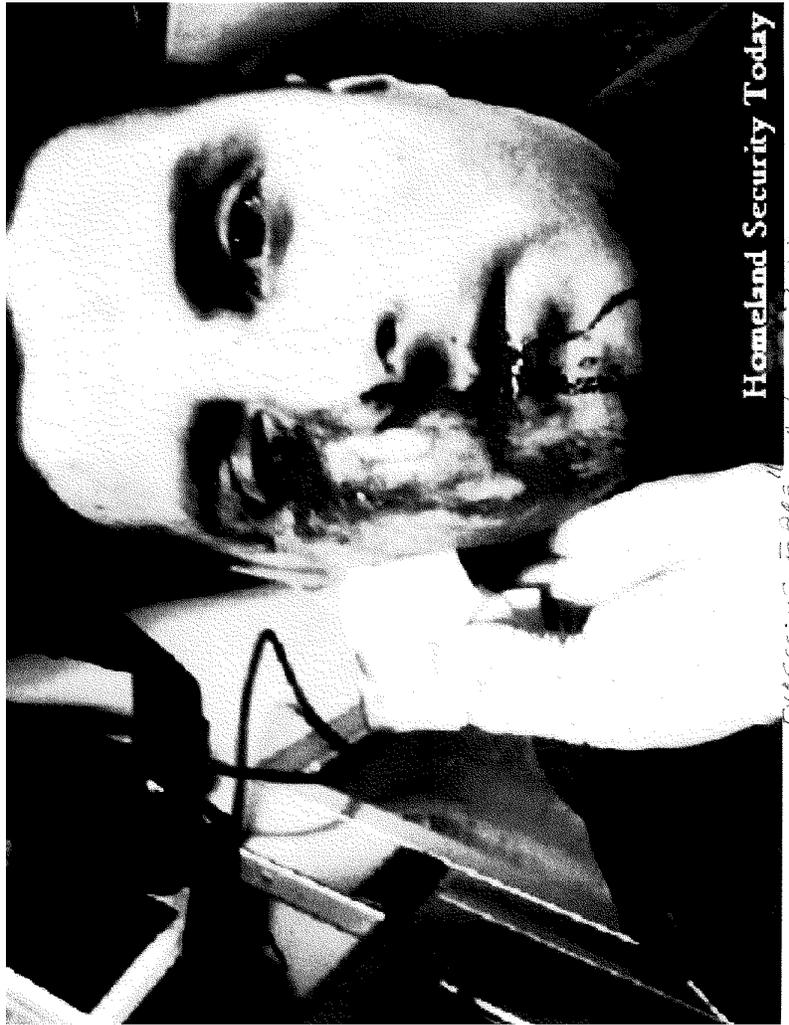
Most Honduran females stated the Honduran government routinely provides free condoms and other forms of contraceptives at very low cost. They were unaware of these items being issued specifically to females making the journey to the US.

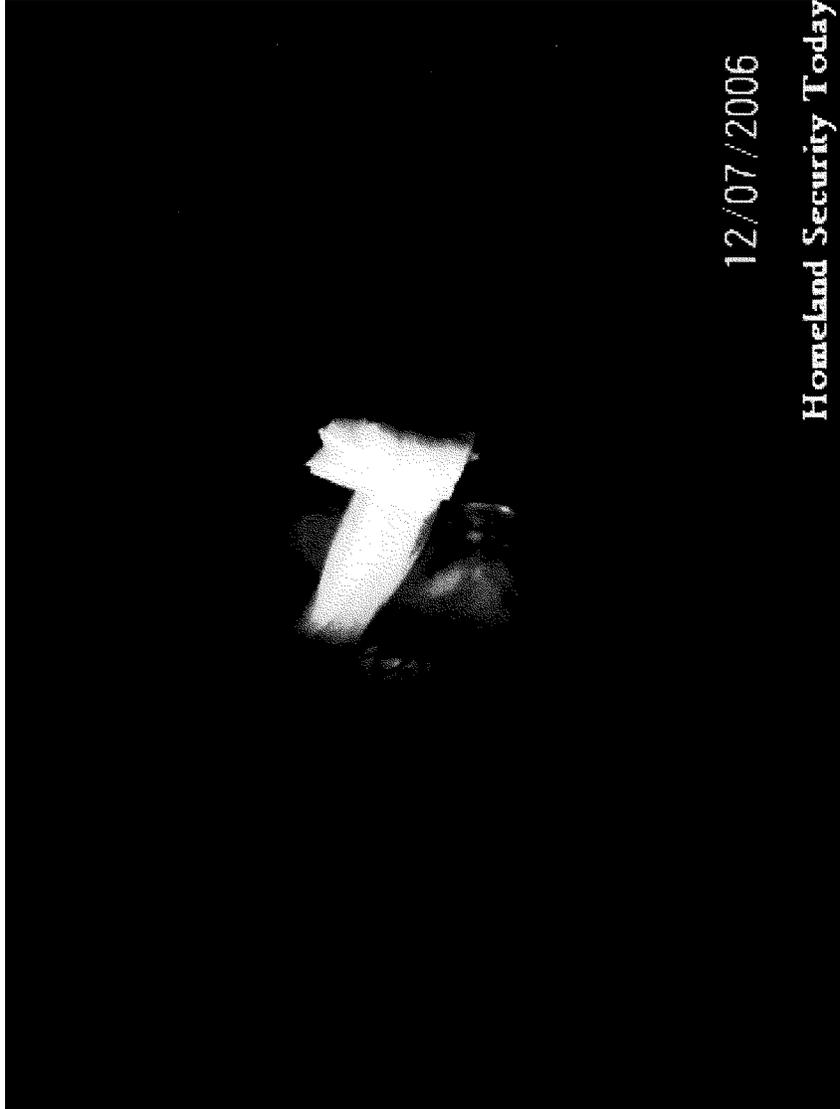
Several female Hondurans stated that they had heard through word of mouth that the Honduran government had been handing out contraceptives to females along the Honduran border, so they could carry with them during their travel to the US. This was to prevent the spread of sexually transmitted diseases or unwanted pregnancies, in case they are sexually assaulted along their trip. (Comments: This information was never confirmed through any official channels.)

Conclusion:

Predictive Analysis: If the collected information is true, RGV Sector will continue to experience increased family units from Central America, at least through June 2014. Traditionally, undocumented alien traffic decreases during the June-July timeframe; however, this year will be an exception. It may also be a matter of time until the OTM family unites and UACs attempt en masse surrenders at the POEs, however, the success of this will depend on how much control the criminals can maintain on the bridges (south side) and POE procedures/facilities for handling large numbers of family units. If any more rumors concerning the issuance of “permisos” surface, or if there is a change in US policy or in the processing of family units and UACs , the flow may change, either to the upside or downside. (NFI)

PHOTOGRAPHS SUBMITTED FOR THE RECORD AS EVIDENCE  
OF ATTACKS ON U.S. BORDER PATROL AGENTS





12/07/2006

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